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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 38

CITY OF EL PASO, APPELLANT,

vs.

GREENBERRY SIMMONS.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED FEBRUARY 25, 1964
PROBABLE JURISDICTION NOTED APRIL 20, 1964

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APPELLANT'S AMENDED DESIGNATION (LETTER) AS TO PRINTING RECORD.

Filed Jul. 6, 1962.

Greenberry Simmons
Attorney at Law
Kentucky Home Life Building
Louisville 2, Kentucky

July 5, 1962

Honorable Edward W. Wadsworth
Clerk, U. S. Court of Appeals
P. O. Box 30120
New Orleans 30, Louisiana

Re: Greenberry Simmons vs. City of El Paso—No. 19754.

Dear Mr. Wadsworth:

In appellant's Designation of Contents of Record on appeal sent to you previously we designated that all the record be printed. Please do not print the three briefs which came up with all of the original papers. The District Court Docket Numbers are (9), (12), (13). No. (9), Plaintiff's Brief, was printed for the District Court.

You will also put plaintiff's exhibits in the record in only one place so as to dispense with duplication. Please put these exhibits in under Plaintiff's Motion

for Summary Judgment No. (7) of the docket rather than in any other place found in the original papers.

Sincerely yours,

GREENBERRY SIMMONS,
(Greenberry Simmons),
Attorney for Appellant.

cc: Harold S. Long
Caples Building
El Paso, Texas

I, Greenberry Simmons, certify that I have this 5th day of July, 1962 mailed a copy of this Amended Designation to Mr. William J. Mounce, El Paso Natural Gas Buildino, bexl Paso, Texas, Attorney of Record for the Defendant and Appellee, City of El Paso.

GREENBERRY SIMMONS.
(Greenberry Simmons).

Civil Docket 2334.

Title of Case.

Greenberry Simmons,
vs.
City of El Paso.

Basis of Action: Suit to clear title to real estate.

Jury Trial Claimed: .....

On .....

Attorneys;

For Plaintiff: Harold S. Long, 415 Caples Bldg., El Paso, Tex.

For Defendants: Hardie, Grambling, Sims & Galatzan.

Date	Plaintiff's Account	Received	Disbursed
8-31-61	Harold S. Long	15.00	
9-1 -61	Transfer U. S. Treas. Fees		15.00

Date		Filings—Proceedings
8-31-61	(1)	Filed Complaint in duplicate.
8-31-61		Issued summons and copy.
9- 6-61	(2)	Filed Return Summons exe. 9-1-61.
9-22-61	(3)	Answer of City of El Paso in dup.
10- 5-6	(4)	Plaintiff's Request for Admissions by Defendant.
11-16-61	(5)	Filed Response to Request for Admission in dup.
12-22-61	(6)	Filed Defendant's Motion for Summary Judgment, in dup.
12-27-61	(7)	Filed Plaintiff's Motion for Summary Judgment.
12-27-61	(8)	Filed Plaintiff's Exhibits 32A-32G (in the vault).
1-15-61	(9)	Filed Brief for Plaintiff on Plaintiff's Motion for Summary Judgment, in dup.
1-15-62	(10)	Filed Certificate showing 2 copies of above brief mailed to Morris A. Galatzan, Attorney for Defendant.
3-16-62	(11)	Filed Defendant's First Amended Answer in dup.
3-16-62	(12)	Filed Memorandum in Support of Defendant's Motion for Summary Judgment.
3-27-62	(13)	Filed Plaintiff's Supplemental Brief in Reply to Defendant's Brief on Motion for Summary Judgment, in dup.
3-27-62	(14)	Filed Affidavit, in dup.
5-18-62	(15)	Filed Motion and Petition of Plaintiff for Rehearing in dup.

Date	Filings—Proceedings
5-18-62 (16)	Filed Summary Judgment for defendant City of El Paso 9/571.
5-21-62	Notices mailed to counsel.
5-21-62 (17)	Filed Order Denying Motion and Petition of Plaintiff for Rehearing. 9/576.
5-22-62	Notices of above order mailed to counsel.
5-22-62 (18)	Filed Appeal Bond for the sum of $250.00.
5-22-62 (19)	Filed Notice of Appeal in dup.

A true copy of the original, I certify.

MAXEY HART,
Clerk.

(Seal)

By PAULINE G. SILVERS,
Deputy.

COMPLAINT.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TEXAS, AT EL PASO, TEXAS.

GREENBERRY SIMMONS,

Plaintiff,

versus

CITY OF EL PASO,

Defendant.

2334—Civil Action.

1. Plaintiff is a Citizen of the State of Kentucky and defendant is a Municipal Corporation incorporated under the laws of Texas. The matter in con-

troversy exceeds, exclusive of interest and costs, the sum of ten thousand ($10,000) dollars.

2. Jurisdiction is further founded on Title 28 United States Code, Section 1655 (62 Statute 944) involving the question of title to real estate located within this District.

3. Plaintiff is the owner of the following described real estate located in El Paso County, Texas known as:

North half, survey 240, Nellie D. Mundy, Scrap File 7219, containing 328.65 acres.

Survey 235, Laura E. Mundy, Scrap File 7230, containing 292 acres.

4. Defendant, City of El Paso, A Municipal Corporation, claims an estate or interest in and to the land adverse to the plaintiff, and the claims of defendant are without any rights whatever, and the defendant has no estate, right, title or interest in the land or premises or any part thereof.

Wherefore, plaintiff Prays:

(1) That the defendant be required to set forth the nature of its claim, and that all adverse claims of the defendant may be determined by the judgment of this Court.

(2) That by judgment it be declared and adjudged that the defendant have no estate or interest whatsoever in, or to said land or premises, or in or to

any part thereof, and that the title of the plaintiff is good and valid.

(3) That the defendant be forever enjoined and debarred from asserting any claim whatever in or to the land or premises, or to any part thereof, adverse to the plaintiff and for such other and further relief as this Court shall deem agreeable and for his costs of this action.

HAROLD S. LONG,
(Harold S. Long),

415 Caples Bldg.,
El Paso, Texas.

GREENBERRY SIMMONS,
(Greenberry Simmons),
Attorneys for Plaintiff.

Kentucky Home Life Bldg.,
Louisville 2, Kentucky.

SUMMONS.

Received Sep. 1, 1961.

United States District Court for the Western District of Texas, El Paso Division.

Greenberry Simmons, Plaintiff,

vs.

CITY OF EL PASO,

Defendant.

Civil Action File No. 2334.

To the above named Defendant:

You are hereby summoned and required to serve upon Harold S. Long, plaintiff's attorney, whose address is 415 Caples Building, El Paso, Texas, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

MAXEY HART,
Clerk of Court,
JESSE J. SAXON,
Deputy Clerk.

(Seal)
(Seal of Court)

Date: August 31, 1961.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Return on Service of Writ.

I hereby certify and return, that on the 1 day of September 1961, at El Paso, Texas I received this summons and served it together with the complaint herein as follows: On September 1, 1961, by serving the City of El Paso by delivering a copy of this writ together with a copy of complaint attached, to Mr. Ralph Seitsinger, Mayor of El Paso in person, at the City Hall, El Paso, Texas.

ALBERT W. SAEGERT,
United States Marshal,
By JACK M. GRAVES,
(Jack M. Graves),
Deputy United States Marshal.

Marshal's Fees	
Travel	$ 0
Service	$2.00
Total	$2.00

Subscribed and sworn to before me, a..... this ..... day of ....., 19.....

(Seal).

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

DEFENDANT'S ANSWER.

Filed Sep. 22, 1961.

(Title Omitted.)

Comes now, Defendant, City of El Paso, and for answer states:

I.

Defendant admits the allegations contained in Paragraph 1 of Plaintiff's Complaint.

II.

In reply to Paragraph 2 of Plaintiff's Complaint, Defendant states that it is without sufficient information or knowledge to form a belief as to the truth of the allegations contained therein, and therefore denies same and demands strict proof thereof.

III.

Defendant denies all the allegations contained in Paragraph 3 of Plaintiff's Complaint.

IV.

In reply to Paragraph 4 of Plaintiff's Complaint, Defendant admits that it claims an estate, or interest, in the land in question, but denies all other allegations contained therein.

V.

Defendant denies that Plaintiff is entitled to any of the relief prayed for in his Complaint.

Answer By Way Of New Matter.

VI.

Defendant states that on November 14, 1955, the General Land Commissioner awarded, without condition of settlement, the North Half (N/2) of Survey 240, SF 7219, Nellie D. Mundy Survey, consisting of 328.65 acres of land in El Paso County, Texas, to the Public Service Board, City of El Paso. On January 26, 1956, said land was patented from the State of Texas to the Public Service Board, City of El Paso, by Patent No. 492, Volume 25-B, Abstract No. 10,078, with all minerals reserved to the State of Texas.

Defendant further states that on November 14, 1955, the General Land Commissioner awarded, without condition of settlement, Section 235, SF 7230, Laura E. Mundy Survey, consisting of 292 acres of land in El Paso County, Texas, to the Public Service Board, City of El Paso. On January 16, 1956, said section was patented from the State of Texas to the Public Service Board, City of El Paso, by Patent No. 491, Volume 25-B, Abstract No. 10,077, with all minerals reserved to the State of Texas.

Since acquiring the lands described hereinabove, Defendant has not conveyed fee title to same.

First Defense.

VII.

Any claim Plaintiff may have had in and to the lands in question is barred by the provisions of Article 5329, Vernon's Annotated Texas Statutes (1925 Compilation).

Second Defense.

VIII.

Defendant has been in open, notorious, continuous, peaceable possession of the lands in question, under title, claiming same against the world for more than three years; consequently, any claim Plaintiff may have had in and to said lands is barred by virtue of Article 5507, Vernon's Annotated Texas Statutes (1925 Compilation).

Third Defense.

IX.

Defendant has been in open, notorious, continuous, peaceable possession of the lands in question, under title, claiming same against the world for more than five years; consequently, any claim Plaintiff may have had in and to said lands is barred by virtue of Article 5509, Vernon's Annotated Texas Statutes (1925 Compilation).

Fourth Defense.

X.

The lands in controversy were forfeited to the State of Texas on July 21, 1947, for non-payment of interest. There have been no adverse claims or suits filed contesting title to such lands since the date of such forfeiture, until the date Plaintiff filed his suit. During the interim fifteen-year period, intervening rights have attached to the lands in question; therefore, Plaintiff should be estopped from asserting any claim to said lands by virtue of the Doctrine of Laches.

Wherefore, premises considered, Defendant prays that Plaintiff's claim for relief be denied, that Defendant be allowed to go hence without day and with its costs.

Respectfully submitted,
HARDIE, GRAMBLING, SIMS & GALATZAN,
By MORRIS A. GALATZAN,
(Morris A. Galatzan).

I certify that I have, this 22nd day of September, 1961, mailed a copy of this Answer to Mr. Harold S. Long, 415 Caples Building, El Paso, Texas, Attorney of record for Plaintiff.

MORRIS A. GALATZAN.

REQUEST FOR ADMISSION.

Filed Oct. 5, 1961.

(Title Omitted.)

To: Mr. Morris A. Galatzan,
Attorney for Defendants.

Please take notice that the plaintiff hereby requests you, pursuant to the provisions of Rule 36 of the Federal Rules of Civil Procedure, to admit, within 10 days after service upon you of this Request, for the purpose of the above-entitled action only, and subject to all pertinent objections to admissibility which may be interposed at the trial, the genuineness of the original documents and official records herewith exhibited to you a duplicate list of these Certified Copies are given to you marked Exhibits 1 to Exhibits 33-A. If you care to see the Certified Copies which will be introduced into Court, they may be observed at the office of the Attorney for the plaintiff. These originally filed official records substantiate the title of the plaintiff on which this action is founded.

The plaintiff also requests you to admit within the time stated above that all the official records annexed to this request and marked Exhibits 23 to 33-A, which are copies of letters, applications for reinstatement of land, and checks for payment of interest sent by the plaintiff to the Commissioner of the General Land Office and stamped received in his office and later returned to this plaintiff by him by letter referring to same, are true copies of such let-

ters, such applications to reinstate land, and such checks for payment of interest.

(Signed) HAROLD S. LONG,
(Harold S. Long),
Caples Bldg.,
El Paso, Texas.

GREENBERRY SIMMONS,
(Greenberry Simmons),
Plaintiff's Attorneys.
Ky. Home Life Bldg.,
Louisville 2, Ky.

Date October 5, 1961.

I certify that I have, this 5th day of October, 1961, mailed a copy of this Request For Admission to Mr. Morris A. Galatzan, El Paso Natural Gas Bldg., El Paso, Texas, Attorney of record for Defendant.

HAROLD S. LONG,
(Harold S. Long).

Plaintiff's Exhibit Nos.:

1. Application of W. H. Glenn to State for Purchase, "For Land As Additional To Home Tract", including Award, signature of Com. Jan. 29, 1910, awarded April 30, 1910 (Land Office).

2. Certificate of three years occupation issued under prior law May 10, 1913 #10189 (Land Office).

3. Warranty Deed W. H. Glenn to Lee H. Orndorff, June 12, 1913. Vol. 23. p. 150 County Clerk's Office of El Paso County, Texas.

4. Warranty Deed Lee H. Orndorff and M. H. Barrough grantors to B. G. Heineman, grantee, for whole section #240 Nellie D. Mundy, dated June 17, 1941 recorded Vol. 694, p. 373, County Clerk's Office, El Paso County, Texas.

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6. Letter of D. G. Heineman to Bascom Giles, General Land Office Commissioner dated Feb. 25, 1943, paid part interest on Survey 235 and promising to pay March 15, 1943, on N/2 Survey 240, N. D. Mundy.

To avoid duplication see exhibit #24.

7. Letter from Bascom Giles, Commissioner of General Land Office, dated May 1, 1947, stating that interest of $262.82 is due and to avoid forfeiture on July 1, 1947 it must be paid addressed to D. G. Heinman Estate.

8. Letter from Commissioner of General Land Office dated July 22, 1947 to D. G. Heinman Estate saying "This is to advise you that the above acreage was forfeited on the records as of July 21, 1947, for nonpayment of interest" marked "Returned unclaimed", never delivered.

9. Certificate by Land Commissioner that no grazing lease was on land involved during year of 1952.

To avoid duplication—Exhibits 10-15. See Exhibits 28-33-A.

10. Deed from Tella H. Heineman, individually and as heir to D. G. Heineman, deceased grantor to Greenberry Simmons dated June 10, 1952 recorded in the County Clerk office of El Paso County July 14, 1952, records of said County in Volume 1077, p. 540 covering survey N/2 240 Nellie D. Mundy containing 328.65 acres; survey 235, Laura E. Mundy, containing 292 acres.

11. Affidavit of heirship of Tella H. Heineman.

12. Deed D. H. Heineman to Greenberry Simmons.

13. Heirship affidavit of D. H. Heineman.

14. Certified copy of letter from Land Office July 24, 1952 to Greenberry Simmons.

14-A. See Exhibits 32-A-32H (32-A same as 14-A).

14-B. See Exhibits 32-A-32-H (32-B same as 14-B).

14-C. See Exhibits 32-A-32-H (32-C same as 14-C).

15. Certified copy of letter from acting Commissioner Wallace September 6, 1952 to Simmons.

16. Application of John B. Kilpatrick to State for purchase, "For land as Additional To Home Tract", including Award, signature of Com. Jan. 29, 1910, awarded April 30, 1910 (Land Office).

17. Certificate of three years occupation issued under prior law May 21, 1913 as recorded in the County Clerk's Office of El Paso County, Vol. 235, p. 71. (Kilpatrick).

18. The will of John B. Kilpatrick bequeathing all of his property to his sister, Margaret Bobodilla, filed Feb. 12, 1929.

19. Order of probate of Kilpatrick's will March 29, 1929.

20. Royalty or mineral deed from Bobodilla to Heineman August 14, 1931.

21. Deed from Bobodilla to L. H. Brandt December 16, 1931, 1/4 undivided interest.

22. Deed from Bobodilla to D. G. Heineman dated July 21, 1941 for 1/2 undivided interest recorded in the County Clerk's Office of El Paso County, Volume 868, p. 575.

23. Duplicate receipts from the General Land Office dated September 2, 1941 and February 26, 1943 for interest paid by D. G. Heineman. (Nos. 23-A-23-B, Heineman; Nos. 23-C-24-D, Bobodilla).

24. Letter of D. G. Heineman to the Commissioner of the General Land Office dated Feb. 25, 1943 paying $37.97 interest.

25. Letter from Bascom Giles, Commissioner of General Land Office dated May 1, 1947 stating that

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30. Deed D. H. Heineman to Greenberry Simmons.

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32-A. Copy of Exhibit 14 signed by Land Commissioner Giles sent to plaintiff dated July 24, 1952, returning 3 applications to reinstate forfeited land and 4 checks for all interest due on forfeited lands.

32-B. Application of plaintiff to reinstate forfeited Survey #N/2 240, stamped by General Land office as follows "Received, July 23, 1952, General Land office" with General Land office number stamped on it 43325.

32-C. Check payable to General Land office signed by Breenberry Simmons, for interest on N/2 240 dated 7-18-52, for $430.10, stamped with General Land office #43325 same number as is stamped on application to reinstate this land.

32-D. Application of plaintiff to reinstate forfeited Survey 235, subscribed and sworn to before the deputy county clerk on July 17, 1952, stamped, "Received July 23, 1952, General Land Office" #43326.

32-E. Check dated 7-18-52 payable to General Land Office for $252.02 for interest for reinstatment of Survey 235, signed by Greenberry Simmons and stamped in upper right hand corner with General Land Office number same as on the application #43326.

32-F. Application of Greenberry Simmons to reinstate Sec. 24, Blk. 70, Tsp 1, T & PRR, grantee, stamped on back "Received Jul. 19, 1952 General Land Office" with 2 numbers stamped 42927, 42928.

32-G. Checks dated 7-16-52 payable to General Land Office for $1158.11 for reinstatement of Sec. 24 etc. interest, stamped in upper right hand corner #42927 signed by Greenberry Simmons. #42927 same as stamped by Land Office on application to reinstate forfeited land.

32-H. Check duplicated—it was damaged in the 3rd duplication process. The damaged check is available for inspection, dated 7-16-52 payable to General Land Office; the amount was left blank, it was for Bal due on reinstatement of Sec, 24, etc., for interest, signed by Greenberry Simmons. Stamped in upper Rt. Con., Land Office #42928.

33. Certified copy of letter from acting Commissioner Wallace September 6, 1952 to Simmons.

33-A. Original Copy of the Certified Copy of Plaintiffs Exhibit #33, signed by acting Land Commissioner Wallace and received by plaintiff, saying "If you are satisfied with your title as recorded in the County Clerk's office of Hudspeth County, you should have no fear or worry"; dated September 6, 1952.

Omitted herewith from the printed record the same being hereinafter copied at page 43 thru 126 Incl.

* * * * * * * *

RESPONSE TO REQUEST FOR ADMISSION.

Filed Nov. 16, 1961.

(Title Omitted.)

Comes now, the Defendant, City Of El Paso, in response to Plaintiff's Request for Admission heretofore filed on October 5, 1961, and admits the genuineness of all documents and instruments marked Ex-

hibits 1 through Exhibits 33-A, Except However, the following:

1. Exhibit 32-B, which purports to be an application for reinstatement covering the N/2 of Survey 240.

2. Exhibit 32-C, which purports to be a check in the amount of $430.11.

3. Exhibit 32-D, which purports to be an applicaton for reinstatement covering Survey 235.

4. Exhibit 32-E, which purports to be a check in the amount of $251.02.

5. Exhibit 32-F, which purports to be an application for reinstatement covering Section 24, Block 70, Township 1, Hudspeth County, Texas.

6. Exhibit 32-G, which purports to be a check in the amount of $1,158.11.

7. Exhibit 32-H, which purports to be a check signed with the amount left blank.

As to Exhibits 32-B to 32-H, inclusive, this Defendant is without sufficient information or knowledge to either admit or deny the genuineness of said documents; consequently, Defendant respectfully denies same and demands strict proof thereof.

I, William J. Mounce, do solemnly swear that I am one of the attorneys for the Defendant, City Of El Paso, that I have read and understand the fore-

going response, and that the matters and allegations set forth therein are true and correct to the best of my knowledge and belief.

WM. J. MOUNCE.

Subscribed And Sworn To Before Me, by the said William J. Mounce, this 13th day of November, 1961, to certify which witness my hand and seal of office.

ROBERTA M. JONES,
(Seal) Notary Public, El Paso County, Texas.

Respectfully submitted,
HARDIE, GRAMBLING, SIMS & GALATZAN,
By WM. J. MOUNCE,
Attorneys for Defendant, City Of El Paso.

I, William J. Mounce, certify that I have this 13th dav of November, 1961, mailed a copy of this pleading to Mr. Harold S. Long, Caples Building, El Paso, Texas, Attorney of Record for Plaintiff.

WM. J. MOUNCE.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.

(Title Omitted.)

Comes now the Defendant, City Of El Paso, and moves the Court for a Summary Judgment in its favor against the Plaintiff, upon the issues tendered by Plaintiff's Complaint, and the Defendant's An-

swer thereto, and as grounds for said Motion, Defendant would show the Court that the pleadings on file herein, those certain documents filed by Plaintiff which Defendant has admitted as being genuine, together with the Affidavits of Morris A. Galatzan and E. J. Umbenhauer, attached hereto and made a part hereof, show that there is no genuine issue as to any material fact as between the Plaintiff and Defendant, and that Defendant is entitled to Judgment as a matter of law.

Respectfully submitted,
HARDIE, GRAMBLING, SIMS & GALATZAN,
By WM. J. MOUNCE,
(William J. Mounce),
Attorneys for Defendant,
City of El Paso.

I, William J. Mounce, certify that I have mailed a copy of this motion to Mr. Harold Long, attorney for Plaintiff, this 22nd day of December, 1961.
WM. J. MOUNCE.

United States District Court for the Western District of Texas, El Paso Division.

Greenberry Simmons, Plaintiff,
vs. Civil Action No. 2334.
City of El Paso, Defendant.

Affidavit.

Before Me, the undersigned authority, on this day personally appeared Morris A. Galatzan, known by

me to be a credible person, who, having been duly sworn, upon his oath deposes and says:

My name is Morris A. Galatzan, and I am one of the attorneys for the Public Service Board of the City of El Paso. Attached hereto and made a part hereof is a copy of a Certificate of Facts, dated September 15, 1961, prepared and certified to by the General Land Office of the State of Texas, pertaining to the North Half (N/2) of Survey 240, S. F. 7219, Nellie D. Mundy, containing 328.65 acres, and Survey 235, S. F. 7230, Laura E. Mundy, containing 292 acres, both parcels being situated in El Paso County, Texas.

Further deponent sayeth not.

MORRIS A. GALATZAN,
(Morris A. Galatzan).

Subscribed And Sworn To on this 11th day of December, 1961, by the said Morris A. Galatzan.

BETTY J. SHANG,
(Seal) Notary Public, El Paso County, Texas.

General Land Office
Austin 14, Texas

Jerry Sadler
Commissioner

September 15, 1961

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that

the papers, records and documents of said office show:

That Section 240, SF 7219, Nellie D. Mundy, 640 acres in El Paso County, was awarded April 30, 1910 to W. H. Glenn on application filed in the Land Office January 29, 1910 to purchase same at $1.50 per acre as additional land to home on Section 239, same grantee and county, and said Section 240 having been classified as Mineral and Dry Grazing and appraised at $1.25 per acre;

That on May 3, 1913, W. H. Glenn made the required proof of occupancy on said Home Section 239, and said proof was filed in the Land Office May 5, 1913, and Certificate of Occupancy No. 10189 issued thereon May 11, 1913;

That by corrected field notes made under survey of September 9th, to October 17, 1922, by J. W. Carter, County Surveyor of El Paso County the acreage of said Survey 240 was corrected from 640 acres to 657.3 acres, and said field notes were filed in the Land Office December 18, 1922 and approved on same date;

That W. H. Glenn and wife, Iva B. Glenn, conveyed the N/2 of said Section 240 and a 1/2 interest in and to the S/2 of said Section 240, with other land to Lee H. Orndorff by instrument dated June 12, 1913, and upon the filing of certified copy of said instrument in the Land Office August 15, 1930 said N/2 of said Section 240 containing 328.65 acres, was set up in a separate account leaving the S/2 of said Section 240, as containing 328.65 acres, standing on the

records of the Land Office in the name of W. H. Glenn and Lee Orndorff;

That the sale by the State of said N/2 of Section 240 was forfeited on July 21, 1947 for nonpayment of interest;

That the file pertaining to said forfeited sale contains no request for reinstatement nor any Treasury Receipt supporting such a request;

That on November 14, 1955, J. Earl Rudder, Land Commissioner awarded the N/2 of said Survey 240, to the Public Service Board, City of El Paso, under the provisions of Senate Bill 295, Acts of the 54th Legislature, Chapter 278, 1955, and payment in full was made in the General Land Office on January 16, 1956;

That the N/2 of Section 240 SF7219 as consisting of 328.65 acres in El Paso County was patented to the Public Service Board, City of El Paso, on January 26, 1956, by Patent No. 492, Volume 25-B, abstract 10078, with all minerals reserved to the State;

That said sale to the Public Service Board of the City of El Paso was made under School File No. 152973, the file wrapper of which bears the following indorsement: "Surface only sold";

* * * * * * * *

That on December 26, 1905, a survey was made for Laura E. Mundy under the provisions of Section 8 of an Act approved April 15, 1905 and an Act ap-

proved February 23, 1900, and field notes were compiled showing said survey to consist of 640 acres, designating same as Section 235 and being in El Paso County, which field notes were filed in the Land Office on January 18, 1906 and were subsequently canceled by corrected field notes;

That said Section 235, SF 7230, Laura E. Mundy Survey as consisting of 640 acres in El Paso County was awarded to Laura E. Mundy on June 1, 1906 upon her application filed in the Land Office May 18, 1906 to purchase same at $1.00 per acre under the classification of Mineral and Dry Grazing;

That the sale by the State of said Section 235, was forfeited on November 5, 1909 for failure to reside upon as required by law and for collusion in the purchase thereof;

That on September 27, 1928, W. L. Rider made a Surveyor's statement as to the method of his survey and corrected field notes on said Survey 235 and filed same in the Land Office October 1, 1928 where they were placed in Scrap File 7230;

That the said W. L. Rider resurveyed said Survey 235 on September 19, 1928, and compiled corrected field notes showing said survey to consist of 292 acres in El Paso County, which field notes were filed in the Land Office October 1, 1928 and were approved as correct on map of El Paso County for 292 acres on January 9, 1956, and which field notes bear the following indorsement: "Patented on January 26, 1956";

That said Section 235, Laura E. Mundy Survey consisting of as consisting of 292 acres in El Paso County and was awarded to John B. Kilpartick on April 30, 1910 upon his application filed in the Land Office January 29, 1910 to purchase same at the price of $1.50 per acre under the classification of Mineral and Dry Grazing as addition to his home tract on Survey 238, SF 233 in El Paso County;

That the sale by the State of said Section 235, John B. Kilpartick was forfeited on July 21, 1947 for nonpayment of interest;

That the file pertaining to said forfeited sale contains no request for reinstatement nor any Treasury Receipt supporting such a request;

That Bascom Giles, Land Commissioner, on May 10, 1954 awarded Prospect Permit No. 41858 to Dr. Lee F. Scarborough covering said Section 235 consisting of 292 acres, which application granted to Dr. Scarborough the right to prospect for metalic minerals and precious stones for a period not to exceed one year, and said Prospect Permit No. 41858 has expired and so stands upon the records of the General Land Office;

That on November 14, 1955, J. Earl Rudder, Land Commissioner, awarded said Section 235, SF 7230 as consisting of 292 acres in El Paso County to Public Service Board of the City of El Paso under the provisions of Senate Bill 295, acts of the 54th Legislature, 1955, Chapter 278, and upon payment in full for 292 acres on January 16, 1956, said Section 235 was patented to the Public Service Board of the City

of El Paso on January 26, 1956, by Patent No. 491, Volume 25-B, Abstract 10077 with all minerals reserved for the State;

That said sale was made under School File No. 152970 in the General Land Office the file wrapper of which bears the following indorsement: "Surface only sold";

In Testimony Whereof, I hereunto set my hand and affix the seal of said office the date first above written.

JACK (Illegible),
JERRY SADLER,
Commissioner Acting of The General Land Office.

(Seal)

JS/LG
Hardie, Grambling, Sims & Galatzan
Attorneys and Counselors at Law
3rd Floor, El Paso Natural Gas Co. Bldg.
El Paso, Texas

Attention: Mr. A. Galatzan.

Fee: $17.50.
Invoice No. 693 CF
Register No. 2161.
Dicta No. L-595 c.
File Nos. School Land 152973, 152972, 152951, 112018, 12119, 112101, 117016, 112121, SF 7230, 7219, 7218.
Mineral Land 4858.

Affidavit.

Filed Dec. 23 961.

(Title Omitted.)

Before Me, the undersigned authority, on this day personally appeared E. J. Umbenhauer, known by me to be a credible person, who, having been duly sworn, upon his oath deposes and says:

My name is E. J. Umbenhauer. I am the Director of the Public Service Board, an agency of the City of El Paso, and have been employed by the Public Service Board for the past 18 years. I am personally familiar with the location, use, occupancy and possession of the North Half (N/2) of Survey 240, S. F. 7219, Nellie D. Mundy, containing 328.65 acres, and Survey 235, S. F. 7230, Laura E. Mundy, containing 292 acres, both parcels of land being situated in El Paso County, Texas.

On October 20, 1955, the City of El Paso applied to the Commissioner of the General Land Office of the State of Texas to purchase the two parcels of land described hereinabove, and on November 14, 1955, such lands were sold to the City of El Paso. Patents for such lands were issued to the City of El Paso January 26, 1956 and filed for record in El Paso County, Texas, January 30, 1956. The patent covering the N/2 of Survey 240 is recorded in Book 1272, Page 554. The patent covering Survey 235 is recorded in Book 1272, Page 555. Both references are to the Deed Records of El Paso County, Texas.

Since January 26, 1956, the City of El Paso, through its Public Service Board, has continuously possessed and controlled the aforesaid lands, claiming same against the world, except for the mineral interests reserved by the State of Texas. During the period of time between January 26, 1956 to the present, the City of El Paso, through its Public Service Board, has surveyed such lands, placed signs thereon prohibiting dumping and hunting on or about such lands, and has removed unauthorized persons from the said premises, when found thereon.

The lands in question are raw, undeveloped lands and are not suitable for farming, grazing or other agricultural pursuits. No taxes of any nature have been assessed against such lands.

Further deponent sayeth not.

E. J. UMBENHAUER,
(E. J. Umbenhauer).

Subscribed And Sworn To on this 20th day of December, 1961, by the said E J. Umbenhauer.

DOROTHY A. BAILEY,
(Dorothy A. Bailey),
(Seal) Notary Public, El Paso County, Texas.

My commission expires June 1, 1963.

NOTICE OF MOTION FOR SUMMARY JUDGMENT.

(Title Omitted.)

To: Morris A. Galatzan,
El Paso National Gas Co. Bldg.,
El Paso, Texas,
Attorney for Defendant.

Please take notice that upon the annexed affidavits of..... and .... ..duly sworn to ....., 1961, and upon the Pleadings therein, the Exhibits annexed thereto and all of the proceedings heretofore had herein, the undersigned move this Court at Room..... of the United States Court House at El Paso, Texas, on the 22nd day of January 1962, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order under Rule 56 of the Federal Rules of Civil Procedure for Summary Judgment in favor of the plaintiff upon all of the grounds set forth in the moving papers herein and for such other and different relief as the Court may deem just and proper in the premises.

Dated Dec. 21, 1961.

HAROLD S. LONG,
(Harold S. Long),

Caples Building,
El Paso, Texas.

GREENBERRY SIMMONS,
(Greenberry Simmons),
Attorneys for Plaintiff.

Kentucky Home Life Bldg.,
Louisville, Kentucky.

I certify that I have this 19th day of December, 1961, mailed a copy of this notice and a copy of the Plaintiff's motion for Summary Judgment, together with copy of Plaintiff's Exhibit, Nos. I-33H, attached thereto:

1. New certifications of Mr. Jerry Sadler, Commissioner of the General Land Office for the State of Texas, stating that he has actual custody of the originals of these dupli-certified copies.

2. Certificate of Judge Ben H. Rice, Jr., Austin, stating that Mr. Jerry Sadler, is the Commissioner of the General Land Office and is legal Custodian of the records of the General Land Office and that they are kept within his district.

3. Certifications of Mr. J. W. Fields, County Clerk of El Paso County, Texas and his deputy clerk, Antonio Chavez, stating that they have actual and legal custody of the originals of these duplicated certified copies.

To Mr. Morris A. Galatzan, El Paso National Gas Co. Bldg., El Paso, Texas, Attorney of record for Defendant.

Original Plaintiff's Exhibits Nos. 32A-32G, both inclusive, mailed to Clerk to be placed in U. S. District Court Clerk's safe.

GREENBERRY SIMMONS.

MOTION FOR SUMMARY JUDGMENT.

Filed Dec. 27, 1961.

United States District Court, Western District of Texas, El Paso Division.

Greenberry Simmons, Plaintiff,
vs. Civil Action No. 2334.
City of El Paso, Defendant.

Now comes Greenberry Simmons, Plaintiff in this action and respectfully shows to the Court that:

I.

After Plaintiff's complaint was filed and served on the Defendant, the Defendant filed and served on the Plaintiff his Answer. Plaintiff then filed and served on the Defendant certain Request for Admissions to the opposing party, as authorized by Rule 36 F.R.C.P. In due course, the Defendant filed and served on the Plaintiff his Response to the Request for Admissions, and his Answer to certain of them which had been served on it.

II.

The facts disclose by the Pleadings, which consist of the Complaint and the Answer and the Request for Admissions and the Responses thereto from the Defendant's attorneys of record show that there is no fact in dispute in this action which is material to disposition thereof, and plaintiff is entitled to judgment as a matter of law.

Plaintiff moves for a Summary Judgment on the Pleadings, Request for Admissions, the Defendant's Response thereto as provided in Rule 56 F.R.C.P.

Wherefore, Plaintiff prays that its motion be granted and that it have judgment against the defendant as prayed in its Complaint.

HAROLD S. LONG,
(Harold S. Long),

Caples Building,
El Paso, Texas.

GREENBERRY SIMMONS,
(Greenberry Simmons),
Attorneys for Plaintiff.

Kentucky Home Life Building,
Louisville, Kentucky.

Certificate of Judge of Court of Records that Attesting Officer Has Custody.

To comply with Federal Rules of Civil Procedure, Rule 44.

I, Ben H. Rice, Jr., Judge of the Western District of Texas, of the United States District Court, Austin, Travis County State of Texas do hereby certify that Jerry Sadler, whose name is subscribed to the foregoing certificates of attestation, now is and was, at the time of the signing and sealing of the same, the Commissioner of the General Land Office for the State of Texas and is legal custodian of the records of the General Land Office for the State of Texas, and that such records are kept in my District in Travis County, State of Texas.

Given under my hand and the seal of said Court, this 27th day of October, 1961.

(Signed) BEN H. RICE, JR.

(Seal)

Survey N/2 240 N.D. Mundy, El Paso County, Texas.

To Prove Chain of Title from State to Simmons; Certified Copies from County Clerk's Office of El Paso County, General Land Office of Texas or Secretary of State of Texas.

Plaintiff's Exhibit Nos.:

1. Application of W. H. Glenn to State for Purchase, "For Land AXS Additional To Home Tract", including Award, signature of Com. Jan. 29, 1910, awarded April 30, 1910 (Land Office).

2. Certificate of three years occupation issued under prior law May 10, 1913 #10189 (Land Office). 2 A.

3. Warranty Deed W. H. Glenn to Lee H. Orndorff, June 12, 1913, Vol. 231, p. 150, County Clerk's Office of El Paso County, Texas.

4. Warranty Deed Lee H. Orndorff and M. H Barrough grantors to D. G. Heineman, grantee, for whole section #240 Nellie D. Mundy, dated June 17, 1941 recorded Vol. 694, p. 373, County Clerk's Office, El Paso County, Texas.

5. Duplicate Receipt from General Land Office dated 7/19/41 paid by D. G. Heineman for $68.12 in-

terest on survey N/2 240 Nellie D. Mundy, 325.65 acres, El Paso County.

To avoid duplication see exhibit #24.

6. Letter of D. G. Heineman to Bascom Giles, General Land Office Commissioner dated Feb. 25, 1943, paid part interest on Survey 235 and promising to pay March 15, 1943. on N/2 Survey 240, N. D. Mundy.

7. Letter from Bascom Giles, Commissioner of General Land Office, dated May 1, 1947, stating that interest of $262.82 is due and to avoid forfeiture on July 1, 1947 it must be paid addressed to D. G. Heinman Estate.

8. Letter from Commissioner of General Land Office dated July 22, 1947 to D. G. Heinman Estate saying "This is to advise you that the above acreage was forfeited on the records as of July 21, 1947, for nonpayment of interest" marked "Returned unclaimed", never delivered.

9. Certificate by Land Commissioner that no grazing lease was on land involved during year of 1952.

To avoid duplication—Exhibits 10-15.

See Exhibits 28-33A.

To avoid duplication from 10 to 15 see Exhibits 28-33A.

10. Deed from Tella H. Heineman, individually and as heir to D. G. Heineman, deceased grantor to Greenberry Simmons dated June 10, 1952 recorded in the County Clerk office of El Paso County July 14, 1952, records of said County in Volume 1077, p. 540 covering survey N/2 240 Nellie D. Mundy containing 328.65 acres; survey 235, Laura E. Mundy, containing 292 acres.

11. Affidavit of heirship of Tella H. Heineman.

12. Deed D. H. Heineman to Greenberry Simmons.

13. Heirship affidavit of D. H. Heineman.

14. Certified copy of letter from Land Office July 24, 1952 to Greenberry Simmons.

14A. See Exhibits 32A-32H (32A same as 14A).

14B. See Exhibits 32A-32H (32B same as 14B).

14C. See Exhibits 32A-32H (32C same as 14C).

15. Certified copy of letter from acting Commissioner Wallace September 6, 1952 to Simmons.

Survey 235 Laura E. Mundy, El Paso County, Texas.

To Prove Chain of Title From State to Simmons; Certified Copies From County Clerk's Office of El Paso County, General Land Office of Texas or Secretary of State of Texas.

Plaintiff's Exhibit Nos.:

16. Application of John B. Kilpatrick to State for purchase, "For land as Additional To Home Tract", including Award, signature of Com. Jan. 29, 1910, awarded April 30, 1910 (Land Office).

17. Certificate of three years occupation issued under prior law May 21, 1913 as recorded in the County Clerk's Office of El Paso County, Vol. 235, p. 71. (Kilpatrick).

18. The will of John B. Kilpatrick bequeathing all of his property to his sister, Margaret Bobodilla, filed Feb. 12, 1929.

19. Order of probate of Kilpatrick's will March 29, 1929.

20. Royalty or mineral deed from Bobodilla to Heineman August 14, 1931.

21. Deed from Bobodilla to L. H. Brandt December 16, 1931, 1/4 undivided interest.

22. Deed from Bobodilla to D. G. Heineman dated July 21, 1941 for 1/2 undivided interest recorded in the County Clerk's Office of El Paso County, Volume 868, p. 575.

23. Duplicate receipts from the General Land Office dated September 2, 1941 and February 26, 1943 for interest paid by D. G. Heineman. (Nos. #23-A-23-B, Heineman; nos. 23C-24D, Bobodilla).

24. Letter of D. G. Heineman to the Commissioner of the General Land Office dated Feb. 25, 1943 paying $37.97 interest.

25. Letter from Bascom Giles, Commissioner of General Land Office dated May 1, 1947 stating that interest of $136.08 is due and to avoid forfeiture it must be paid addressed to D. G. Heineman Estate.

26. Letter from Commissioner of General Land Office dated July 22, 1947 to D. G. Heineman Estate saying "This is to advise you that the above acreage was forfeited on the records as of July 21, 1947, for nonpayment of interest marked "Returned unclaimed", never delivered.

27. Certified copy of outside of above envelope to this letter returned to the Land Office.

28. Deed from Tella H. Heineman, individually and as heir to D. G. Heineman, deceased grantor to Greenberry Simmons dated June 10, 1952 recorded in the County Clerk Office of El Paso County, July 14, 1952, records of said County in Volume 1077, p. 540 covering survey N/2 240 Nellie D. Mundy containing 328.65 acres; survey 235, Laura E. Mundy, containing 292 acres.

29. Affidavit of heirship of Tella H. Heineman.

30 Deed D H Heineman to Greenberry Simmons

31. Heirship affidavit of D. H. Heineman.

32. Certified copy of letter from Land Office July 24, 1952 to Greenberry Simmons.

32A. Copy of Exhibit 14 signed by Land Commissioner Giles sent to plaintiff dated July 24, 1952, returning 3 applications to reinstate forfeited land and 4 checks for all intesest due on forfeited lands.

32B. Application of plaintiff to reinstate forfeited Survey n/2 240, stamped by General Land office as follows "Received, July 23, 1952, General Land office" with General Land office number stamped on it 43325.

32C. Check payable to General Land office signed by Greenberry Simmons, for interest on n/2 240 dated 7-18-52, for $430.10, stamped with General Land office #43325 same number as is stamped on application to reinstate this land.

32D. Application of plaintiff to reinstate forfeited Survey 235, subscribed and sworn to before the deputy county clerk on July 17, 1952 stamped, "Received July 23, 1952, General Land Office" #43326.

32E. Check dated 7-18-52 payable to General Land Office for $252.02 for interest for reinstatement of Survey 235, signed by Greenberry Simmons and stamped in upper right hand corner with General Land Office number same as on the application #43326.

32F. Application of Greenberry Simmons to reinstate Sec. 24, Blk. 70, Tsp 1, T & PRR, grantee,

stamped on back "Received Jul 19, 1952 General Land Office" with 2 numbers stamped 42927 42928.

32G. Checks dated 7-16-52 payable to General Land Office for $1158.11 for reinstatement of Sec. 24, etc interest, stamped in upper right hand corner #42927 signed by Greenberry Simmons. #42927 same as stamped by Land Office on application to reinstate forfeited land.

32H. Check duplicated—it was damaged in the 3rd duplication process. The damaged check is available for inspection, dated 7-16-52 payable to General Land Office; the amount was left blank, it was for Bal due on reinstatement of Sec. 24, etc, for interest, signed by Greenberry Simmons. Stamped in upper Rt. Con., Land Office #42928.

33. Certified copy of letter from acting Commissioner Wallace September 6, 1952 to Simmons.

33A. Original Copy of the Certified Copy of Plaintiffs Exhibit #33, signed by acting Land Commissioner Wallace and received by plaintiff, saying "If you are satisfied with your title as recorded in the County Clerk's office of Hudspeth County, you should have no fear or worry"; dated September 6, 1952.

PLAINTIFF'S EXHIBIT
NO. I

Application For Land as Additional to Home Tract Applied For

To J. T. Robinson, Commissioner General Land Office:

I hereby apply to purchase under the provisions of Chapter 17, Act of 1895, and Chapter 129, Act of May 31, 1897, as the same was revised April 19, 1901, April 15, 1905, and May 16, 1907, the following land in El Paso County, Texas, about Yucca Miles (give course) Northwest from County Seat, and I agree to pay for said land the price per acre specified below:

Survey	Certificate	GRANTEE	Acres	Price per Acre	Classification
240	57 1214	Nellie E. Mundy	640	1 50	Mis. D. E.

I am over twenty-one years of age, and my postoffice address is El Paso

El Paso County, Texas. I have, since the 19th day of April, A. D. 1901, purchased ... Public School Land Acreage Units as follows:

Survey	Certificate	GRANTEE	Acres	P. O. Address when each Purchase was made
		None		

I ... am buying it for agricultural or grazing purposes ... express condition that the minerals therein shall ... I hereby make and subscribe to the following

W H Glass

... I desire to purchase said land as ... Survey 239, ... No 1218 Grantee Nellie ... that I will in good faith ... the land I purchase ... that I am now in possession ... with them for the purpose of ... or corporation is directly or in-

W H Glass Applicant

January 1910

Sec H Landoff

Notary Public El Paso County, Texas.

OBLIGATION

El Paso

El Paso County, Texas. I have, since the 19th day of April, A. D. 1901, purchased

from School Land Agent as follows:

Date of Purchase	Grantee	Acres	P. O. Address when each Purchase was made
	None		

I am holding it for agricultural or grazing purposes

and it is not my intention that the minerals thereon shall

be reserved. I hereby make and subscribe to the following

affidavit:

I desire to purchase said land as

Survey 239, Sec. 1218, Grantee McClure

I swear that I will in good faith

cultivate some portion of the land I purchase,

~~that I am now in possession~~ and that this is for the purpose of

actual cultivation and not speculation, directly or in-

directly.

Applicant

January 1910

Notary Public El Paso County, Texas

OBLIGATION

School Lands

No. 6 File No. 112119

APPLICATION OF

County

Land and Office

19

Additional to Home Applied For

Section Block Certificate Acres

Township County

In County

Filed 19

Commissioner General Land Office

Awarded 30 19

Rejected 19

J. Matteson

Commissioner General Land Office

By

County

Abstract

Vol.

Section

No.

Page

Land

Surveyor

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certiied Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT

No. 2

1158-1102-8m.

STATE OF TEXAS,

El Paso County. } Before Me, the undersigned authority, this day personally appeared

A.F.Glenn

who having been duly sworn by me, states upon oath that he is the owner of the following school lands in

County, situated about thirteen miles from the county site

Block	Certificate	GRANTEE	Acres
	7218	Nellie D.Mundy	640
	7219	Nellie D.Mundy	640
	7220	Nellie D.Mundy	640
	7221	Nellie D.Mundy	640
	7222	Nellie D.Mundy	640
	7223	Nellie D.Mundy	640
	7225	Nellie D.Mundy	640
52	7014	T.&.P.Ry.Co.	640

The original number in the application to purchase being No 239 , Blk

assigned to A.F.Glenn (original grantee Nellie D.Mundy)

The said lands were settled upon and occupied as follows

State the facts with particularity—not overlooking when and on which section settlement was made and on which section residence was permanently fixed, and if the land has been sold, state where and time each purchaser resided

A.F.Glenn states upon his oath, that he on or about the 15th day of July, 1901, he actually went upon said section 239 of the above described land in person and took up his actual bonafide residence upon said section 239 of the above described lands and has resided upon the same continuously since the said on or about the 15th day of July, 1901, he is now an actual bonafide resident upon said Section. That his actual bonafide home upon said section since on or about the 15th day of July, A.D.1901.

The designated home section in the application to purchase being No. 299, Blk. ____ Cert. 7218, issued to W.H.Glenn (Original grantee Willis D.Money.)

That said lands were settled upon and occupied as follows:

(State the facts with particularity—not overlooking when and on which section settlement was made and on what section residence was permanently fixed, and if the land has been sold, state where and when such publication was made.)

The said W.H.Glenn states upon his oath, that he on or about the 15th day of July A.D.1910, he actually went upon Section 299 of the above described lands in person and took up his actual bonafide residence upon said Section 299 of the above described lands and has resided upon said Section 299 continuously since the date of his first entry upon said Section of July A.D.1910 and is now an actual bonafide resident upon said Section and has had his actual bonafide home upon said Section since on or about the said 15th day of July A.D.1910.

That the improvements described below are worth the amounts specified and were caused to be placed on the sections indicated by the persons named at the time stated, as follows:

The said W.H.Glenn has erected on his home Section one four (4) room adobe dwelling house, with two porches, shingle roof, bath and all modern improvements, which cost more than $2000.00.
Also one well, with Gasoline Engine and Pump, which cost more than $500.00.
Also One Barn, Corral, Chicken houses, etc., which cost more than $200.00.
Also woven wire fence around house, barn, etc., which cost more than $90.00, Also has planted orchard which cost more than $100.00, all of which said improvements are worth at least $2850.00 cash.

Said affiant W.H.Glenn further states upon his oath that he commenced to improve said home Section 299 as soon as he took up his residence thereon and that said improvements have been made from time to time on said Section up to the present date, all as hereinabove stated.

Also at the same time personally appeared Sam B. Gillett, J. T. Porcher and

three credible citizens of El Paso County, each of whom having been duly sworn

upon oath says: That the facts above stated in regard to occupancy and permanent improvements are within the

edge of each, true and correct, and that each for himself says upon oath that he is not either directly or indirectly

terested in the land or title thereto.

J H Gillett

Sam B. Gillett

R C Buby

Julius T Porcher

Subscribed and sworn to before me this 3rd day of May 19

NOTE—Officer must not omit seal.

Notary Public, El Paso

(3)

File No. 112108

County.

SCHOOL LAND

PROOF OF OCCUPANCY AND IMPROVEMENTS

Filed 5 1 19 13

J H Gillett Commissioner.

W O Brice File Clerk

10189

Certificate of Occupancy issued and sent to

Brice Lowe

El Paso Tex

11 day of May 19 13

J H Gillett Commissioner.

FILED

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT No. 2A.

53487.

Cert. of Three Years Residence.

General Land Office No. 10189.

I, J. H. Walker, Chief Clerk, acting Commissioner of the General Land Office of the State of Texas, do hereby certify that W. H. Glenn on the 5th day of Mav A. D. 1913, filed proof of three consecutive years' residence and occupancy on Section No. 239 Block No. ... S. F. No. 7218, Tsp. ..., Grantee Nellie D. Mundy in El Paso County, as required by Articles 4218j and 4218l, Revised Civil Statutes of 1895, and said

proof is corroborated by the affidavits of Sam B. Gillett, R. C. Bailey and Julius T. Porcher, whose credibility is certified to by C. H. Jones, as Notary Public El Paso County, Texas; that said land was originally sold to W. H. Glenn on 29th day of Jany. A. D. 1910.

The following lands were purchased as additional to Section 239, Block ..., S. F. No. 7218, Tsp..... Grantee Nellie D. Mundy, in El Paso County, and are hereby included in this certificate by request.

Part of	Section	Block	Certificate	Grantee	County
	10	82	7014	T.&P. Ry. Co.	El Paso
			S. F.		
	240		7219	Nellie D. Mundy	"
	241		7220	" "	"
	242		7221	" "	"
	243		7222	" "	"
	244		7223	" "	"
	246		7225	" "	"

In Testimony Whereof, I hereunto set my hand and cause to be affixed the Seal of the General Land Office. Done at Austin, Texas, this the 10 day of May A. D. 1913.

File 112108 to 14. 117996. Fee Paid $4.50.

J. H. WALKER,
Acting Commissioner of the
General Land Office.

Filed for record May 17, 1913 at 3:45 P.M.

And recorded May 31, 1913 at 9:15 A.M.
PARK W. PITMAN,
County Clerk,
By L. C. BOWLES,
Deputy.

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Certificate, From State of Texas to W. H. Gleen Dated the 10 day of May 1913, as the same appears of record in the Deed Records of Said County in Volume 221 page 585 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 2 day of Nov. A. D. 1961.

J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
Deputy.

(Seal)

County Clerk's Office of El Paso County, Texas, dated this 2 day f Nov. 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 3.

54160.

Warranty Deed.

The State of Texas,
County of El Paso.

Know All Men By These Presents: That we, W. H. Glenn and wife Iva B. Glenn, of the County of El Paso, State of Texas for and in consideration of the sum of Ten ($10.00)—and other good and valuable considerations Dollars, to us in hand paid by Lee H. Orndorff, the receipt of which is hereby acknowledged, and the assumption by the said Lee H. Orndorff of one half of the indebtedness now due the State of Texas on the hereinafter described lands.

Have Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey, unto the said Lee H. Orndorff, of the City of El Paso, of the County of El Paso, State of Texas, all that certain tract or parcel of land situated in El Paso County, Texas, and being the undivided one half interest in and to

all of Section two hundred and forty two (242), Certificate No. 7221 of the Public School Lands of El Paso County, Texas, also the undivided one half interest in Sections two hundred and forty three (243), Certificate No. 7222, two hundred and forty four (244), Certificate No. 7223 and Section two hundred and forty six (246), Certificate No. 7225 and the undivided half interest in the South half of section 240, certificate 7219 and Section ten (10), Block Numbered Eighty two (82) Certificate No. 7014 T. & P. Ry. Co's surveys, all in El Paso County, Texas, it being intended to convey and there is hereby conveyed the undivided one half interest in and to all of the above described lands.

Also all of the North half of Section two hundred and forty (240), Certificate No. 7219 of the Public School Lands in El Paso County, Texas, so that from this date said North half of said Section 240 shall be owned individually by said Lee H. Orndorff and the South half of said Section 240 Oshall be owned jointly by the said W. H. Glenn and Lee H. Orndorff.

It is intended to convey by this deed and there is conveyed by this deed to the said Lee H. Orndorff all of the North half said Section 240, Certificate No. 7219, which said Lee H. Orndorff shall own individually from this date; and said Lee H. Orndorff shall own the undivided one half of the South half of said Section 240, Certificate No. 7219, the other undivided one half in said South half of said Section being retained by the grantors herein, also said Lee H. Orndorff shall own the undivided one half interest in and all of said sections 242, 243, 244, 246 and said section 10 in Block No. 82 T. & P. Ry. Co's surveys, said W. H. Glenn retaining the other undivided one half interest in and to said surveys.

To Have and To Hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Lee H. Orndorff, his heirs and assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators, to warrant and Forever Defend, all and singular the said premises unto the said Lee H Orndorff, his heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

Witness our hands at El Paso, Texas, this 12th day of June A. D. 1913.

Witnesses at Request of Grantor:
W. H. GLENN,
IVA B. GLENN.

The State of Texas,
County of El Paso.

Before Me, the undersigned authority a Notary Public, in and for El Paso County, Texas, on this day personally appeared W. H. Glenn and Iva B. Glenn his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Iva B. Glenn wife of the said W. H. Glenn having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Iva B. Glenn acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

all of Section two hundred and forty two (242), Certificate No. 7221 of the Public School Lands of El Paso County, Texas, also the undivided one half interest in Sections two hundred and forty three (243), Certificate No. 7222, two hundred and forty four (244), Certificate No. 7223 and Section two hundred and forty six (246), Certificate No. 7225 and the undivided half interest in the South half of section 240, certificate 7219 and Section ten (10), Block Numbered Eighty two (82) Certificate No. 7014 T. & P. Ry. Co's surveys, all in El Paso County, Texas, it being intended to convey and there is hereby conveyed the undivided one half interest in and to all of the above described lands.

Also all of the North half of Section two hundred and forty (240), Certificate No. 7219 of the Pubiic School Lands in El Paso County, Texas, so that from this date said North half of said Section 240 shall be owned individually by said Lee H. Orndorff and the South half of said Section 240 Oshall be owned jointly by the said W. H. Glenn and Lee H. Orndorff.

It is intended to convey by this deed and there is conveyed by this deed to the said Lee H. Orndorff all of the North half said Section 240, Certificate No. 7219, which said Lee H. Orndorff shall own individually from this date; and said Lee H. Orndorff shall own the undivided one half of the South half of said Section 240, Certificate No. 7219, the other undivided one half in said South half of said Section being retained by the grantors herein, also said Lee H. Orndorff shall own the undivided one half interest in and all of said sections 242, 243, 244, 246 and said section 10 in Block No. 82 T. & P. Ry. Co's surveys, said W. H. Glenn retaining the other undivided one half interest in and to said surveys.

To Have and To Hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Lee H. Orndorff, his heirs and assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators, to warrant and Forever Defend, all and singular the said premises unto the said Lee H Orndorff, his heirs and assigns, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

Witness our hands at El Paso, Texas, this 12th day of June A. D. 1913.

Witnesses at Request of Grantor:
W. H. GLENN,
IVA B. GLENN.

The State of Texas,
County of El Paso.

Before Me, the undersigned authority a Notary Public, in and for El Paso County, Texas, on this day personally appeared W. H. Glenn and Iva B. Glenn his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Iva B. Glenn wife of the said W. H. Glenn having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Iva B. Glenn acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given Under My Hand And Seal Of Office, This 13 day of June A. D. 1913.

THOS. M. MAYFIELD,
Notary Public, El Paso County, Texas.

(Notarial Seal)

Filed for record June 13, 1913 at 4:45 P.M.

And recorded June 25, 1913 at 4:30 P.M.

PARK W. PITMAN,
County Clerk,
By L. C. BOWLES,
Deputy.

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Warranty Deed From W. H. Gleen et ux to Lee H. Orndoroff Dated the 12 day of June 1913, as the same appears of record in the Deed Records of Said County in Volume 231 page 150 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 2 day of Nov. A. D. 1961.

J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
Deputy.

(Seal)

County Clerk's Office of El Paso County, Texas, dated this 2 day of Nov. 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 4.

Warranty Deed.
21690.

The State of Texas,
County of El Paso.
Know All Men By These Presents:

That we, Lee H. Orndorff and M. H. Barrough, not joined by our wives because the property herein conveyed forms no part of our homesteads, of the County of El Paso, State of Texas, for and in consideration of the sum of $10.00 cash to us in hand paid by D. G. Heineman, receipt of which is acknowledged,

have Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey, unto the said D. G. Heineman, of the County of El Paso, State of Texas, all that certain real estate, located in El Paso County, Texas, described as follows, towit:

Section No. 240, S. F. 7219, Nelie D. Mundy grantee, containing 657.3 acres, more or less; section No. 242, S. F. 7221, Nellie D. Mundy grantee, containing 640 acres, more or less; and section No. 243, S. F. 7222, Nellie D. Mundy grantee, containing 637.6 acres, more or less;

Grantee takes said land subject to the State debt and interest thereon, against said land, and grantors do not warrant against the same.

This deed is intended and shall be construed as a separate conveyance of each respective section, and the grantee assumes the taxes on each respective section accordingly, but the taxes so assumed on any one section shall not affect nor be affected by any other section, and no release of any implied lien shall be required of the grantors.

To Have and To Hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said D. G. Heineman, his heirs and assigns forever and we do hereby bind ourselves, our heirs, executors and administrators, to Warrant and Forever Defend, all and singular the said premises unto the said D. G. Heineman, his heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, by thru or under us, but not otherwise.

Witness our hands at El Paso, Texas, this 17th day of June, 1941.

Witness at request of Grantor:
(Stamps)

LEE H. ORNDORFF,
M. H. BARROUGH.

Single Acknowledgment.

The State of Texas,
County of El Paso.

Before Me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Lee H. Orndorff and M. H. Barrough, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given Under My Hand and Seal of Office this the 17th day of June, A. D. 1941.

EVELYN K. WEHLING,
(Evelyn K. Wehling),
(Seal) Notary Public, El Paso County, Texas.

21690 Warranty Deed From Lee H. Orndorff, M. H. Barrough to D. G. Heineman. Filed for Record Jul. 16, 1941 at 4:00 o'clock P.M. and Recorded July 21, 1941 at 9 o'clock A.M., By P. D. Lowry, County Clerk. By W. H. Dundan, Deputy. This instrument should be filed immediately with the County Clerk for record. 6/17/41.

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Warranty Deed From Lee H. Orndorff et al., to D. G. Heineman Dated the 17 day of June 1941, as the same appears of record in the Deed Records of Said County in Volume 694 page 373 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 21 day of July, A. D. 1961.

J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
(Seal) Deputy.

County Clerk's Office of El Paso County, Texas, dated this 13 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
(Seal) Deputy.

PLAINTIFF'S EXHIBIT No. 5.

Duplicate Receipt.
(To be Kept by Land Office)

Ledger 171.
Page 473.
File No. 147016.

23054.

Posted Post Office El Paso, Tex. 7/17, 1941.

To the Commissioner General Land Office, Austin, Texas. Suite 322 El Paso Nat'l. Bank Bldg.

I enclose (Say whether Money Order or Draft on a Bank in Austin, or Cash.) Ch for $68.12, payable to the "State Treasurer," of which ($..... are for principal $68.12 are for interest) payment on the following land purchased from the State by ....., to-wit:

N½ Section 240.
Block.....
Township .....
Certificate S.F. 7219.
Grantee Nellie D. Mundy.
Acres 328.65.
County El Paso 7/19/41.

It is (Say whether School, Asylum, or University.) School Land.

(Name of Sender.) E. W. Earl, D. G. Heineman.

.....,

Commissioner General Land Office.

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT No. 6.

To avoid duplication see Exhibit #24.

PLAINTIFF'S EXHIBIT No. 7.

May 1, 1947

D. G. Heineman Estate
El Paso National Bank Bldg.
El Paso, Texas

Re: N/2 Section 240, Nellie D. Munday, 328.65 acres in El Paso County.

Gentlemen:

The records of this office reflect that you have made payments on the above described lands, on which there is a sum of $262.82 due as interest and penal interest to November 1, 1946.

If you are the present owner and are desirous of protecting your rights in this acreage, it will be necessary that remittance of the above amount, together with penal interest at the rate of 5% per annum, calculated from November 1, 1946 to date of payment, be made to avoid forfeiture of the account on July 1, 1947. Unless I have received payment prior to that date, it will be presumed that you are not further interested in this land, and this will serve as my notice of forfeiture on the above stated date.

Sincerely yours,
BASCOM GILES,
Commissioner of the General Land Office.

CRL:pd
File: 147016

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office, together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT No. 8.

General Land Office
State of Texas
Austin

Bascom Giles, Commissioner
Alvis Vandygriff, Chief Clerk

July 22, 1947

D. G. Heineman Estate
El Paso National Bank Bldg.
El Paso, Texas

Re: N/2 Section 240, Nellie D. Munday, 328.65 acres, El Paso, County.

Gentlemen:

This is to advise you that the above acreage was forfeited on the records of this office as of July 21, 1947, for non-payment of interest.

In order that you may have complete information regarding recent legislation governing reinstatement of forfeited accounts, I enclose herewith a summary of House Bill No. 56 of the 47th Legislature.

In making inquiry regarding this land, it will be necessary that you give the full description as shown above.

Sincerely yours,
BASCOM GILES,
(Bascom Giles),
Commissioner of the General Land Office

CRL:pd
File: 147016
Encl.

Returned unclaimed.

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT No. 9.

The State of Texas
General Land Office
Austin 14, Texas

Jerry Sadler
Commissioner

October 18, 1961

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that after diligent seasch no record is found to exist in the records of this office as to the existence during

the year 1952 of any form or type of lease from the State of Texas on the following lands:

(1) Survey 235, SF 7230, Laura E. Mundy Survey, Abstract No. 10077 as consisting of 292 acres in El Paso County, Texas;

(2) North half of Survey 240, SF 7219, Nellie D. Mundy Survey, Abstract No. 10078, as consisting of 328.65 acres in El Paso County, Texas;

In Testimony Whereof, I hereunto set my hand and affix the seal of said office the date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

JS/lg

Mr. Greenberry Simmons
Attorney At Law
Kentucky Home Life Building
Louisville 2, Kentucky

Fee: $8.50.
Invoice No. 789 CF.
Account No. 742.
El Paso School Files: 152972, 152973, 112121, 147016.
Dicta No. L-655 c.

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas do hereby certify that

I am the officer who has custody of the filed original official records and documents of the General Land Office and that the attached and foregoing Certificate of Facts has been faithfully prepared from said records and documents to reflect the archival history of the lands recited therein.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

PLAINTIFF'S EXHIBITS Nos. 10-15.

To Avoid Duplication See Exhibits # 28-33A.

PLAINTIFF'S EXHIBIT NO. 16

Application For Land as Additional to Home Tract Applied For

To J. T. Robinson, Commissioner General Land Office:

I hereby apply to purchase under the provisions of Chapter 47, Act of 1895, and Chapter 129, Act of May 14, 1897, and the Acts approved April 19, 1901, April 15, 1905, and May 16, 1907, the following land situated in El Paso County, Texas, about Fifteen Miles (give course) West from County Seat, and I agree to pay for said land the price per acre specified below:

Survey	Block	Certificate	GRANTEE	Acres	Price per Acre	Classification
Lindsey 237	—	7237	Laura E. Lindsey	640	$1.50	Non-M

I am over twenty-one years of age, and my postoffice address is El Paso

El Paso County, Texas. I have, since the 19th day of April, A. D. 1901, purchased no Public Free School and Asylum lands as follows:

Survey	Block	Certificate	GRANTEE	Acres	P. O. Address when each Purchase was made
None					

For the purpose of my oath and I represent that I am buying it for agricultural or grazing purposes and that the sale to me is upon the express condition that the minerals thereon shall be reserved to the State, which the land belongs, and I hereby make and subscribe to the following

I John R. Kilpatrick do solemnly swear that I desire to purchase said land as additional to the home tract which I have applied to purchase, as follows: Section No. Survey 238 Block — Township — Certificate 1.F. 7233 Grantee Laura E. Lindsey in El Paso County, and that I will in good faith commence to improve and reside upon my home tract or upon some portion of the land I purchase, within three months from the date my application for my home tract is accepted, or that I am not now, and will not be personally, directly or indirectly, and that I am not acting in collusion with others for the purpose of purchasing this land for any other person or corporation, and that no other person or corporation is directly or indirectly interested in the purchase thereof.

Signed John R. Kilpatrick Applicant

Subscribed and sworn to before me this 23rd day of November A.D. 1907

County, Texas

Officer must not put on seal

Public Free School and Asylum lands as follows?

Block	Certificate	GRANTEE	Acres	P O Address when each Purchase was made
		None		

I, the undersigned, do solemnly swear that I desire to purchase said land as agricultural or grazing purposes, and that I am buying it for agricultural or grazing purposes, and not for the purpose of speculation, and that the sale to me is upon the express condition that the minerals thereon shall belong to the State of Texas, which the said land belongs, and I hereby make and subscribe to the following

I, John R. Kilpatrick, do solemnly swear that I desire to purchase said land as agricultural or grazing land, which I have applied to purchase, as follows: Section No. Survey 238 GH, Township —, Certificate 1F 7233, Grantee Laura E. [illegible] County, and that I will in good faith commence the actual bona fide settlement on my home tract or on some portion of the land I purchase, to date my application for my home tract is accepted, or that I am a permanent resident, and that I am not acting in collusion with others for the purpose of speculation, or with any other person or corporation, and that no other person or corporation is directly or indirectly interested in the purchase thereof.

Sworn to before me this [illegible] day of [illegible], 19[illegible]

John R. Kilpatrick, Applicant

[illegible] Notary Public

[illegible] County, Texas

Other notarization if any

OBLIGATION

[illegible] School Lands.

I, the undersigned, do promise to pay to the State of Texas the sum of One Hundred Thirty and 20/100 Dollars with interest thereon as hereinafter specified, the same being the purchase money for the following described tract of land purchased by me this day in accordance with the provisions of Chapter 17, Act of 1895, and Chapter 129, Acts of May 1st, 1901, and May 16, 1907, to wit: Survey of Section No. 235, Township —, Certificate 1F 7230, Grantee Laura E. [illegible], [illegible] County, Texas.

I promise to pay interest at the rate of three per cent upon all unpaid principal, together with one fortieth of the original purchase money to be paid to the State Treasurer at Austin, Travis County, Texas, on or before the [illegible] day of [illegible] after the whole purchase money is paid. And it is expressly understood and agreed by me that in addition to the conditions, limitations and requirements, as I am subject to and accept all the conditions contained in the above recited Acts.

Witness my hand, this [illegible] day of January, 19[illegible].

Witness, Texas

John R. Kilpatrick

No. File 112121

File No. 112121

APPLICATION OF

P. O.

County

Land District

Additional to Home Applied For

Filed 19

Section	Block	Certificate	Acres

Township Grantee

Commissioner

File Clerk

In County

Filed 19

Commissioner General Land Office.

APP 361

Awarded 19

Rejected 19

Commissioner General Land Office.

Roll

Class

Appr'm't

Appl'n

Obligation

Seal

Map

Lease

On Market

Printed and For Sale by

APR 26

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT No. 17.

53774.

Certificate of Three Years Residence.

General Land Office No. 10213.

I, J. T. Robison, Commissioner of the General Land Office of the State of Texas, do hereby certify that John B. Kilpatrick on the 19th day of May A. D. 1913, filed proof of three consecutive years' residence and occupancy on—Section No. 238 Block No. ....., S.F. No. 7233 Tsp. ....., Grantee Laura E. Mundy in El Paso County, as required by Articles 4218j and 4218l, Revised Civil Statutes of 1895; and said proof is corroborated by the affidavits of R. C. Barby, J. W. Spivey and Julius T. Borcher whose credibility is cer-

tified to by Sam B. Gillett as Notary Public, El Paso County, Texas; that said land was originally sold to John B. Kilpatrick on 29th day of Jany. A. D 1910 The following lands were purchased as additional to Section 238, Block ..... S.F. No. 7233, Tsp..... Grantee Laura E Mundy in El Paso County and are hereby included in this certificate by request.

Part of	Section	Block	Certificate	Grantee	County
	6	82	7012	T. & P. Ry. Co.	El Paso
	235		7230	Laura E. Mundy	" "
	236		7231	" " "	" "
	237		7232	" " "	" "
	245		7224	Nellie D. Mundy	" "
	253		7246	Clara A. Mundy	" "
	254		7247	" " "	" "

In testimony whereof, I, hereunto set my hand and cause to be affixed the seal of the General Land Office. Done at Austin, Texas, this the 21st day of May, A. D. 1913.

File 112119 to 25 118007.

Fee paid $4.50.

J. T. ROBISON,
Commissioner of the General Land Office.

(Seal General Land Office The State of Texas.)

Filed for Record May 29, 1913 at 11:19 A.M.

PARK W. PITMAN,
County Clerk.

And Recorded June 12, 1913 at 10:40 A.M.
By L. C. BOWLES,
Deputy.

(Seal)

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Certificate John B. Kilpatrick Dated the 21 day of May 1913, as the same appears of record in the Deed Records of Said County in Volume 235 page 71 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 18 day of Aug. A. D. 1961.

J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
Deputy.

(Seal)

County Clerk's Office of El Paso County, Texas, dated this 13 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 18.

5497

Will of John Boyd Kilpatrick.

Filed Feb. 12, 1929, W. D. Greet, County Clerk, by (Illegible) Deputy.

In the Name of God Amen! I John Boyd Kilpatrick, of El Paso, El Paso County in the State of Texas, being of sound mind and memory, knowing the uncertainty of human life, do now make and publish this my last will and testament:

Imprimis: It is my will, and I do hereby authorize and direct the person hereinafter named as executor to pay all my just debts including the expenses of my last illness, and of my funeral, as soon as practical after my decease, and in order to enable said Executor to do so, I desire that my said Executor shall have full power to sell such of my property as the Executor may deem necessary for such purpose.

Secondly, I do hereby will, devise and bequeath all property, and estate, real and personal, and mixed, belonging to me at my decease, as follows to the following Devisees and Legatees, each and all of

them, in severalty, and to their heirs forever, that is to say:

I do will, devise and bequeath to my beloved sister, Mrs. Margaret Bobadilla all of my estate, both real and personal of every kind whatsoever, and wherever situated, and to have and to hold as her absolute property, to her heirs and assigns forever.

I do hereby nominate and appoint L. H. Brandt, of Vinton, Texas, as the Executor of this my last will and testament, and do hereby direct that no security shall be required of said Executor for the performance of such duties, and that letters testamentary be issued to said Executor without bond.

It is my will, and I do hereby provide and direct that no other action shall be had in the County Court having jurisdiction in relation to the settlement of my estate than the publishing and recording of this will and the return of an inventory, appraisement and list of claims of my estate.

And I do revoke any and all former wills by me made, and publish and declare this to be my last will and testament at the City of E Paso, County of El Paso, in the State of Texas, this 19th day of April, A: D. 1917.

In testimony whereof, I do hereby set my name and scroll in lieu of and for seal the date last above written, in the presence of the following named persons, who sign the same as witnesses at my request and in the presence of each other.

JOHN BOYD KILPATRICK.
(Seal.)

Witnesses:
R. E. BRYANT,
G. J. TROUT.

A True and Correct Copy, I Hereby Certify, July 21, 1961.

J. W. FIELDS,
Clerk, County Court, El Paso County, Texas,
By ANTONIO CHAVEZ,
Deputy.

(Seal)

County Clerk's Office of El Paso County, Texas, dated this 13 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 19.

In the County Court of El Paso County, Texas, Probate Docket.

In the Estate of:
John Boyd Kilpatrick, Deceased.
No. 5497.

This, the 29th day of March, A. D. 1929, came on to be heard the sworn written application of L. H. Brandt, a resident of El Paso County, Texas, for the probate of a certain instrument in writing, dated the 19th day of April, 1917, and now produced in Court, being filed herein with said Application on the 12th day of February, 1929, purporting and alleged to be the last will of John Boyd Kilpatrick, Deceased, and due proof being taken in the manner required by law, and it being proved to the satisfaction of the Court that this Court has jurisidction of this Estate; that citation has been duly issued, served and returned in the manner and for the length of time required by law; that the Testator, John Boyd Kilpatrick, at the time of executing the said will was at least 21 years of age, was of sound mind and died on the 16th day of January, 1929, at El Paso, in El Paso County, Texas; that such Testator executed such will with the formalities and solemnities and under the circumstances required by law to make it a valid will; that the same has not been revoked by such Testator, and that it is entitled to probate, and it further appearing that the Applicant, L. H. Brandt, was named in said will as executor; that he is entitled by law to letters and is not disquali-

fied by law from accepting letters, and that there is a necessity for administration on said Estate;

It Is, Therefore, Ordered, Adjudged and Decreed that the said will on file herein be, and the same is hereby admitted to probate and record as the last will of the said John Boyd Kilpatrick, Deceased, and the testimony given in this proceeding shall be recorded in the minutes of this Court, and

It Is Further Ordered, Adjudged and Decreed that administration be granted upon the estate of the said John Boyd Kilpatrick, Deceased, and that said L. H. Brandt, Applicant herein, receive letters testamentary upon his taking the oath required by law, and when the said L. H. Brandt shall have qualified according to law, the Clerk of this Court will issue letters in accordance with this judgment, It is ordered that W. R. Piper, Sam Musser, and C. G. Mueller are herey appointed appraisers to appraise the estate.

E. B. McCLINTOCK,
Judge, Probate Court, El Paso
County, Texas.

A True and Correct Copy, I Hereby Certify, July 21, 1961.

J. W. FIELDS.
Clerk, County Court, El Paso
County, Texas.
By ANTONIO CHAVEZ.
Deputy.

(Seal)

County Clerk's Office of El Paso County, Texas, dated this 13 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy

(Seal)

PLAINTIFF'S EXHIBIT No. 20.

54774.

Royalty Deed.

The State of California,
County of Los Angeles.

Know All Men By These Presents: That I, Margaret Bobadilla, joined by my husband, Louis Bobadilla, of the County of Los Angeles, State of California, for and in consideration of the sum of $10.00

and other considerations, cash in hand paid by D. G. Heineman, of El Paso, Texas, receipt of which is acknowledged, and the assumption by the said D. G. Heineman of one fourth of all the State and County taxes, and one fourth of all interest on the State debt on the lands hereinafter described, which may accrue in the future, do hereby grant, bargain, sell, convey, set over, assign and deliver unto the said D. G. Heineman of El Paso County, Texas, an undivided one fourth interest in and to my fifteen-sixteenths interest in and to all of the oil, gas and other minerals, and stone, sand, gravel and other building materials in, on and under, and that may be produced from the following described land, situate in El Paso County, Texas, to wit:

Section	Block	Certificate	Grantee.
235	S F	7230	L. E. Mundy.
236	S F	7231	do
238	S F	7233	do
253	S F	7246	C. A. Mundy.
254	S F	7247	do

together with right of ingress and egress at all times for the purpose of mining and drillig and exploring said lands, for oil, gas and other minerals, or stone, sand, gravel and other building materials, and removing the same therefrom;

And the said above described lands being now under oil and gas leases originally executed in favor of J. S. Meriwether, in which I retained one sixteenth royalty of all the oil and gas produced from said leases, it is understood and agreed that this sale is made subject to said leases, but cover and include

one fourth of all of my said one sixteenth oil and gas royalty and rental due and to be paid under the terms of said leases.

It is agreed and understood that one fourth of the money rentals which may be paid to extend the time in which a well may be begun under the terms of said leases, shall be paid to the said D. G. Heineman, and in the event that the above described leases, or either of them, for any reason become canceled or forfeited, then in that event, one fourth of the lease interests and all future rentals and royalties on said land, for oil, gas and all minteral privileges (in excess of the one sixteenth royalty due the State of Texas), together with one fourth interest in all future rentals, shall be owned by the said D. G. Heineman.

It is also understood that contracts may be made by which sand, gravel or stone for building material, or road material, may be sold, and that the said D. G. Heineman, by this instrument acquires an undivided one fourth interest in and to all proceeds of such contracts.

To Have and To Hold the above described property together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the said D. G. Heineman, his heirs and assigns forever; and I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend, all and singular, the said property unto the said D. G. Heineman, his heirs and assigns, against every person whomsoever lawfully claming or to claim the same, or any part thereof.

Witness our hands this 14th day of August, 1931.

MARGARET BOBADILLA,
LOUIS BOBADILLA.

The State of Texas,
County of El Paso.

Before Me, the undersigned authority, on this day personally appeared Louis Bobadilla, to me known to me the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and notarial seal, this 14th day of August, 1931.

RETHA LEE LASSETER,
Notary Public, in and for El Paso County, Texas.

(Notarial Seal: County of El Paso, Texas.)

The State of California,
County of Los Angeles.

Before Me, the undersigned authority, on this day personally appeared Margaret Bobadilla, wife of Louis Bobadilla, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Margaret Bobadilla acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and notarial seal, this 18th day of August, 1931.

ABBIE G. LOWRIE,
Notary Public, in and for Los Angeles County, California.

(Notarial Seal: Los Angeles Co., Cal.)

My Commission expires Dec. 20, 1931.

Filed for Record Sept. 9, 1931 at 10:46 A. M.

And Recorded Sept. 14, 1931 at 4:20 P. M.

W. D. GREET,
County Clerk,
By A. A. OSBORNE,
Deputy.

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Royalty Deed From, Margaret Bobadilla et ver to D. G. Heineman Dated the 14 day of Aug. 1931, as the same appears of record in the Deed Records of Said County in Volume 554 page 466 thereof.

Given under my hand and seal of office, at office at El Paso, Texas, this the 21 day of July A. D. 1961.

J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
Deputy.

(Seal)

County Clerk's Office of El Paso County, Texas, dated this 13 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas.
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 21.

57473.

Warranty Deed.

The State of California,
County of Los Angeles.

Know All Men By These Presents: That I, Margaret Bobadilla, joined by my husband, Louis Bovadilla, of the County of Los Angeles, State of California, for and in consideration of the sum of $10.00,

and other considerations, cash in hand paid by L. H. Brandt, of Dona Ana County, New Mexico, receipt of which is acknowledged, and the assumption by the said L. H. Brandt of one fourth of all the State and County taxes, and one fourth of the State debt, and interest thereon, on the lands hereinafter described, do hereby grant, sell and convey, unto the said L. H. Brandt of Dona Ana County, New Mexico, an undivided one fourth interest in and to the following described land, situate in El Paso County, Texas, to wit:

Section		Grantee
235	SF 7230	L. E. Mundy
236	SF 7231	do
238	SF 7233	do
253	SF 7246	C. A. Mundy
254	SF 7247	do

And the said above described lands being now under oil and gas leases originally executed in favor of J. S. Meriwether, in which I retained one sixteenth royalty of all the oil and gas produced from said leases, it is understood and agreed, that this sale is made subject to said leases, but covers and includes one fourth of all my said one sixteenth oil and gas royalty, and cash rentals, due and to be paid under the terms of said lease.

To Have and To Hold the above described property together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said L. H. Brandt, his heirs and assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators, to warrant and forever defend all

and singular the said property unto the said L. H. Brandt, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof, except as against the one sixteenth mineral or royalty interest held by the State of Texas, subject to which, this deed is made.

Witness our hands, this 16th day of December, 1931.

MRS. MARGARET BOBADILLA.
LOUIS BOBADILLA.

The State of California,
County of Los Angeles.

Before me, the undersigned authority, on this day personally appeared Louis Bobadilla, and Margaret Bobadilla, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

And the said Margaret Bobadilla, wife of Louis Bobadilla, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Margaret Bobadilla, acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and notarial seal this 16th day of December, 1931.

ABBIE G. LOWRIE,
Notary Public in and for Los Angeles County, California.

(Notarial Seal, Los Angeles Co. Cal.)

Filed for Record Jan. 8, 1932 at 1:30 P. M.

And Recorded Jan. 12, 1932 at 2:00 P. M.
W. D. GREET,
County Clerk,
By IVA COCHRAN,
Deputy.

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Warranty Deed From Margaret Bobadilla to L. H. Brandt Dated the 16 day of Dec. 1931, as the same appears of record in the Deed Records of Said County in Volume 550 page 248 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 18 day of Aug. A. D. 1961.
J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
(Seal) Deputy

County Clerk's Office of El Paso County, Texas, dated this 13 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have

the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 22.

91547.

Warranty Deed.

The State of California,
County of Los Angeles.
Know All Men By These Presents:

That I, Margaret Bobadilla, joined by my husband, Louis Bobadilla, of the County of Los Angeles, State of California, for an in consideration of the sum of $1000 and other valuable consideration to me in hand paid by D. G. Heindeman, receipt of which is acknowledged, and the assumption by the grantee of the following obligations against the land hereinafter described:

(a) Three-fourths (3/4ths) of all of the interest on the State debt, to and including November 1, 1940;

(b) One-half (1/2) of all the interest on the State debt from November 1, 1940;

(c) One-half (1/2) of all the State and County taxes accrued to date of this deed and hereafter accruing;

(d) One-half (1/2) of the State debt for the purchase price of said land;

have granted, sold and conveyed, and by these presents do grant, sell and convey, unto the said D. G. Heineman, of the County of El Paso, State of Texas, an undivided one-half (1/2) interest in and to the following described real estate, located in El Paso County, Texas, towit:

1. Section Two Hundred Thirty-five (235), S.F. 7230, Laura E. Mundy, Grantee, containing 293.4 acres.

2. Section Two Hundred Thirty-eight 238), S.F. 7233, Laura E. Mundy, Grantee, containing 640 acres.

3. Section Two Hundred Fifty-four (254), S.F. 7247, Clara A. Mundy, Grantee, containing 640 acres.

Together with one-half (1/2) of the land owner's rental and royalty under any oil and gas lease now on said land.

The assumption by the grantee of a portion of the above obligations against said land shall be construed

as a separate contract as to each section as a separate transaction, as tho separate deeds were executed for each tract, and the assumption of the obligations on one section shall not affect nor be affected by nor be construed as a lien on any other section.

To Have and To Hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said D. G. Heineman, his heirs and assigns forever and I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend, all and singular the said premises unto the said D. G. Heineman, his heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

Witness our hands this 21st day of July, 1941.

MARGARET BOBADILLA,
LOUIS BOBADILLA.

The State of California,
County of Los Angeles.

Before Me, the undersigned authority, on this day personally appeared Louis Bobadilla and Margaret Bobadilla, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Margaret Bobadilla, wife of the said Louis Bobadilla, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Margaret Bobadilla acknowledged such instru-

ment to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given Under My Hand and Notarial Seal 4th day of August, 1941.

ANNA S. FINE,
(Seal) Notary Public in and for Los Angeles County, California.

My Commission Expires Sept. 19, 1944.

No. 91547 Warranty Deed, Margaret Bobadilla, Louis Bobadilla, to D. G. Heineman. Filed for Record in El Paso County, Texas, Jul. 16, 1947 at 3 o'clock P.M. and Recorded July 21, 1947 at 9 o'clock A.M. P. D. Lowry, County Clerk, by W. T. Duncan, Deputy. July 21/41.

The State of Texas,
County of El Paso

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Warranty Deed From Margaret Bobadilla et vir to D. G. Heineman Dated the 21 day of July 1941, as the same appears of record in the Deed Records of Said County in Volume 868 page 575 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 21 day of July, A. D. 1961.

J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
(Seal) Deputy.

County Clerk's Office of El Paso County, Texas, dated this 13 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas.
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 23,

Nos. 23A, 23B, HEINEMAN, Nos. 23C, 23D, BOBADILLA.

6806-2.

Duplicate Receipt.
(To be Kept by Land Office)

Ledger 91.
Page 561.
File No. 112121.
Posted Post Office El Paso, Tex. 11-30, 1932.

To The Commissioner General Land Office, Austin, Texas. 4005 Moreland Ave.

I enclose (Say whether Money Order or Draft on a Bank in Austin, or Cash.) C. Chk. for $9713, payable to the "State Treasurer", of which ($..... are for principal $12.32, 62 P.I are for interest $1344) payment on the following land purchased from the State by ....., towit:

Section 235.
Block .....
Township .....
Certificate S.F. 7230.
Grantee L. E. Mundy.
Acres 292
County El Paso 12-1-32.
It is (Say whether School, Asylum, or University) School Land.
(Name of Sender) Mrs. Margaret Bobadilla.

.....,
Commissioner General Land Office.

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

11602-2.

Duplicate Receipt.
(To be Kept by Land Office)

Ledger 91.
Page 561.
File No. 112121.
Posted Post Office El Paso, Texas 2-13-1934.
To The Commissioner General Land Office, Austin, Texas. 2311 Tremont St.

I enclose (Say whether Money Order or Draft on a Bank in Austin, or Cash.) (Illegible) for $77.03, payable to the "State Treasurer," of which ($.81 are for

principal $12.42 are for interest 13.23 payment on the following land purchased from the State by ....., towit:

Section 235.
Block .....
Township .....
Certificate 7230.
Grantee Laura E. Mundy.
Acres 292.
County El Paso. 2-17-34.
It is (Say whether School, Asylum, or University) School Land.
(Name of Sender) Margaret Bobadilla.

....., Commissioner General Land Office.

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

14671.

Duplicate Receipt.
(To be Kept by Land Office)

Bascom Giles, Commissioner.
Alvis Vandygriff, Chief Clerk.

Ledger 171.
Page 468.
File No. 112121.
Posted Post Office El Paso, Tex., 1943.
To The Commissioner General Land Office, Austin, Texas.

I enclose (Say whether Money Order or Draft on a Bank in Austin, or Cash.) C. Ck. for $37.97, of which ($..... are for principal $37.97 are for interest ..... are for $.....fees. payment on the following land purchased from the State, to-wit:

Section 235.
Block .....
Township .....
Certificate SF 7230.
Survey L. E. Mundy.
Acres 292.
County El Paso. 2-26-43.
(Name of Sender) D. G. Heineman.
(Address) 207 El Paso Nat. Bk. Bld.

Received remittance as stated above.

.....
Commissioner General Land Office.

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

44.

Duplicate Receipt.
(To be Kept by Land Office)

Ledger 171.
Page 468.
File No. 112121.
Posted Post Office El Paso, Tex 8/30, 19...

To the Commissioner General Land Office, Austin, Texas. 207 El Paso Nat. Bank Bldg.

I enclose (Say whether Money Order or Draft on a Bank in Austin, or Cash.) Cck. for $39.35, payable to the "State Treasurer," of which ($ ..... are

for principal $39.35 are for interest) payment on the following land purchased from the State by ....., to-wit:

Section 235.
Block .....
Township .....
Certificate SF 7230.
Grantee Laura E. Munday.
Acres 292.
County El Paso. 9/2/41.

It is (Say whether School, Asylum, or University) School Land.

(Name of Sender) D. G. Heineman.

....,
Commissioner General Land Office.

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
(Seal) Commissioner of the General Land Office.

PLAINTIFF'S EXHIBIT No. 24.

1685

207 El Paso National Bank Bldg.,
El Paso, Texas.
February 25, 1943.

Mr. Bascom Giles,
Commissioner General Land Office,
Austin, Texas.

Dear Sir:

I enclose herewith cashier's check on El Paso National Bank, No. 259783 for $37.97 to cover one-third of interest due on Section 235, S. F. 7230, Laura E. Mundy, Grantee, El Paso County;

Also cashier's check No. 255781 for $86.19 to cover one-third of the interest due on Section 238, S. F. 7233, Laura E. Mundy, Grantee, El Paso County;

Also cashier's check No. 259782 for $85.60 to cover one-third of interest due on Section 254, S.F. 7247, Clara A. Mundy, Grantee, El Paso County;

Also cashier's check No. 259779 for $86.12 to cover one-third of interest due on Section 26, Block 79, Twp., 2, El Paso County;

Also cashier's check No. 259780 for $86.12 to cover one-third of interest due on Section 34, Block 79, Twp. 2, El Paso County.

This is in compliance with previous correspondence concerning this matter.

I will mail checks no later than March 15th on the following lands:

Survey 245, S.F. 7224 N: D. Mundy, Grantee; also The S. W. 1/4 and the E. 1/2 of S. E. 1/4 of Survey 237 S.F. 7232, Laura E. Mundy, Grantee, and
The N. 1/2 of Survey 240 S.F. 7219, N. D. Mundy, Grantee.

Hoping this will be satisfactory I remain,
Respectfully,
D. G. HEINEMAN

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT No. 25.

May 1, 1947

D. G. Heineman Estate
El Paso National Bank Bldg.
El Paso, Texas

Re: Part Section 235, Laura E. Munday, 292 acres in El Paso County.

Gentlemen:

The records of this office reflect that you have made payments on the above described lands, on which there is a sum of $136.08 due as interest and penal interest to November 1, 1946.

If you are the present owner and are desirous of protecting your rights in this acreage, it will be necessary that remittance of the above amount, together with penal interest at the rate of 5% per annum, calculated from November 1, 1946 to date of payment, be made to avoid forfeiture of the account on July 1, 1947. Unless I have received payment prior to that date, it will be presumed that you are not further interested in this land, and this will serve as my notice of forefeiture on the above stated date.

Sincerely yours,
BASCOM GILES,
Commissioner of the General Land Office.

CRL:pd
File: 112121

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT No. 26.

General Land Office
State of Texas
Austin

Bascom Giles, Commissioner
Alvis Vandygriff, Chief Clerk

July 22, 1947

D. G. Heineman Estate
El Paso National Bank Building
El Paso, Texas

Re: Part Section 235, Laura E. Munday, 292 Acres in El Paso County.

Gentlemen:

This is to advise you that the above acreage was forfeited on the records of this office as of July 21, 1947, for non-payment of interest.

In order that you may have complete information regarding recent legislation governing reinstatement of forfeited accounts, I enclose herewith a summary of House Bill No. 56 of the 47th Legislature.

In making inquiry regarding this land, it will be necessary that you give the full description as shown above.

Sincerely yours,
BASCOM GILES,
(Bascom Giles),
Commissioner of the General Land Office.

CRL:emp
File: 112121
encl.

Returned Unclaimed.

General Land Office, Austin, Texas, October 18, 1961

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT

No. 27

BASCOM GILES
COMMISSIONER
GENERAL LAND OFFICE
AUSTIN 14 TEXAS

OFFICIAL BUSINESS
STATE OF TEXAS
STATE PENALTY
FOR PRIVATE USE

AUSTIN TEXAS JUL 22 '67 .03

The D. G. Holloman Estate
[illegible] El Paso National Bank Building
El Paso, Texas

General Land Office, Austin, Texas, October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
(Seal) Commissioner of the General Land Office.

PLAINTIFF'S EXHIBIT No. 28.

85495.

Quit Claim Deed—With Single, Joint and Wife's Separate Acknowledgments.

The State of Michigan,
County of Alger.
Know All Men By These Presents:

That Tella H. Heineman, a widow, of the County of Alger and State of Michigan, for and in consideration of the sum of Ten Dollars, to me in hand paid by Greenberry Simmons, Ky. Home Life Bldg., Louis-

ville, Ky. of the County of Jefferson and State of Kentucky, the receipt of which is hereby acknowledged, do, by these presents, Bargain, Sell, Release, and Forever Quit Claim unto the said Greenberry Simmons his heirs and assigns, all my right title and interest in and to that certain tract or parcel of land lying in the County of El Paso and State of Texas, described as follows, to-wit:

North half; Survey 240, Nellie D. Mundy, original grantee, Scrap File 7219, Abstract 9932, Containing 328.65 acres, more or less.

Survey 235, Laura E. Mundy, original grantee, Scrap File 7230, Containing 292 acres, more or less.

To Have and To Hold the said premises, together with all and singular the rights, privileges and appurtenances thereto in any manner belonging unto the said Greenberry Simmons, his heirs and assigns, forever, so that neither Tella H. Heineman the said nor her heirs, nor any person or persons claiming uder her shall, at any time hereafter, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part thereof.

Erasures and Interlineations noted before execution.

Witness my hand at Munising, Michigan this 10th day of June A. D. 1952.

TELLA H. HEINEMAN,
(Tella H. Heineman),
Individually and as heir of
D. G. Heineman, deceased.

Witnesses at Request of Grantor:
ETHEL JOSLIN.
(Seal)

Single Acknowledgment.

The State of Michigan,
County of Alger.

Before Me, the undersigned, a Notary Public, in and for said County, Michigan, on this day personally appeared Tella H. Heineman known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given Under My Hand and Seal of Office, This 10 day of June, A. D. 1952.

(Seal)

CLIFFORD T. EBBESON,
Notary Public, Alger Co., Michigan.

Comm. expires Aug. 11-54.

No. 85495 Quit Claim Deed With Single, Joint and Wife's Separate Acknowledgments From Tella H. Heineman To Greenberry Simmons Filed For Record Jul. 14, 1952 at 9:10 o'clock A.M. Raymond L. Telles, Jr., County Clerk, El Paso Co., Texas, By W. T. Duncan, Deputy. This instrument should be filed immediately with the County Clerk for record.

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Quit Claim Deed From Tella H. Heineman to Greenberry Simmons Dated the 10 day of June 1952, as the same appears of record in the Deed Records of Said County in Volume 1077 page 540 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 2 day of Oct. A. D. 1961.

J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
(Seal) Deputy

County Clerk's Office of El Paso County, Texas, dated this 2 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso
County, Texas.
ANTONIO CHAVEZ,
(Antonio Chavez),
(Seal) Deputy.

PLAINTIFF'S EXHIBIT No. 29.

85493.

Affidavit of Heirship of D. G. Heineman, deceased.

State of Michigan,
County of Alger.

Tella H. Heineman, widow, of Alger County, Michigan, states upon oath that her husband D. G. Heineman died intestate several years ago and that she and her son, D. H. Heineman are the only heirs at law of D. G. Heineman, deceased.

TELLA H. HEINEMAN,
(Tella H. Heineman).

Sworn to and subscribed before me this 10 day of June, 1952.

CLIFFORD T. EBBESON,
(Seal) Notary Public of Alger Co., Michigan.

My Commission expires August 11-1954.

32008 Filed for Record June 24, 1952 at 1 o'clock P.M. Martha L. McLure, Clerk County Court, Hudspeth Co., Tex., By Martha L. McLure, Deputy.

The State of Texas,
County of Hudspeth

I, Martha L. McLure Clerk of the County Court in and for said County, do hereby certify that the foregoing Affidavit of Heirship dated the 10th day of June, 1952, with its certificate of authentication, was filed for Record in my office, the 24 day of

June, 1952, at 1 o'clock P.M., and duly Recorded the 24th day of June, 1952, at 3:45 o'clock P.M., in Deed Record of said County, in Vol. 54 on Page 101.

Witness my hand and the seal of the County Court of said County, at office in Sierra Blanca, Texas, the day and year first above written.

MARTHA L. McLURE,
Clerk County Court Hudspeth County,
By .....,
Deputy.

85493 Aff. Tella H. Heineman as to D. G. Heineman, dec'd. Filed for Record Jul. 14, 1952 at 9:10 o'clock A.M. Raymond L. Telles, Jr., County Clerk, El Paso Co., Texas, By W. T. Duncan, Deputy.

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Affidavit of Heirship as to D. G. Heineman Deceased Dated the 10 day of June 1952, as the same appears of record in the Deed Records of Said County in Volume 1077 page 469 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 2 day of Oct. A. D. 1961.

J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
Deputy.

(Seal)

County Clerk's Office of El Paso County, Texas, dated this 2 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 30.

85494

The State of Nevada,
County of Clark.

Know All Men By These Presents:

That D. H. Heineman, unmarried of the County of Clark and State of Nevada, for and in consideration of the sum of Ten Dollars, to me in hand paid by Greenberry Simmons, Ky. Home Life Bldg., Louis-

ville 2, Ky. of the County of Jefferson and State of Kentucky, the receipt of which is hereby acknowledged, do, by these presents, Bargain, Sell, Release, and Forever Quit Claim unto the said Greenberry Simmons his heirs and assigns, all my right title and interest in and to that certain tract or parcel of land lying in the County of El Paso and State of Texas, described as follows, to-wit:

North half, Survey 240, Nellie D. Mundy, original grantee, Scrap File 7219, Abstract 9932, Containing 328.65 acres more of less.

All of Survey 235, Laura E. Mundy, original grantee, Scrap File 7230, Containing 292 acres, more or less.

To Have and to Hold the said premises, together with all and singular the rights, privileges and appurtenances thereto in any manner belonging unto the said Greenberry Simmons his heirs and assigns, forever, so that neither D. H. Heineman the said nor his heirs, nor any person or persons claiming under him shall, at any time hereafter, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part thereof. Erasures and Interlineations noted before execution.

Witness my hand at Las Vegas, Nevada this 18th. day of June A.D. 1952.

D. H. HEINEMAN,
(D. H. Heineman),
Individually, and as heir of
D. G. Heineman, deceased.

Witnesses at Request of Grantor:

.....

.....

No. 85494 Quit Claim Deed With Single, Joint and Wife's Separate Acknowledgments from D. H. Heineman, (Illegible) etc. to Greenberry Simmons. Filed for Record Jul. 14, 1952, County Clerk. At 9:10 O'Clock A.M. Raymond L. Telles, Jr., Deputy County Clerk, El Paso Co., Texas. Recording Fee $..... By W. H. Duncan Deputy. This instrument should be filed immediately with the County Clerk for record.

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Quit Claim Deed From D. H. Heineman to Greenberry Simmons Dated the 18 day of June 1952, as the same appears of record in the Deed Records of Said County in Volume 1077 page 539 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 2 day of Oct. A.D., 1961.

J. W. FIELDS,
County Clerk,
By ANTONIO CHAVEZ,
Deputy.

(Seal)

Single Acknowledgment.

The State of Nevada,
County of Clark.

Before Me the undersigned, a Notary Public, in and for said County, Nevada, on this day personally

appeared D. H. Heineman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given Under my Hand and Seal of Office, This 12th. day of June, A. D. 1952.

C. L. FLEMING,
Notary Public, Clark Co.
Nevada. (Seal).

My Commission expires this 25 day of March, 1955.

County Clerk's Office of El Paso County, Texas, dated this 2 day of Oct., 1961.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office in the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso
County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 31.

85492

Affidavit of Heirship of D. G. Heineman, deceased.

State of Nevada,
County of Clark.

D. H. Heineman, of Clark County, Nevada, after being duly sworn states upon oath that his father, D. G. Heineman died intestate several years ago and that he and his mother, Tella H. Heineman, widow, of D. G. Heineman, are the only heirs at law of D. G. Heineman deceased.

D. H. HEINEMAN,
(D. H. Heineman).

Sworn to and subscribed before me this 18th day of June, 1952.

C. L. FLEMING,
(Seal) Notary Public, Clark Co. Nevada.

My Commission expires March 25, 1955.

The State of Texas,
County of El Paso.

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Affidavit of Heirship as to D. G. Heineman Deceased. Dated the 18 day of June, 1952, as the same appears of record in the Deed Records of Said County in Volume 1077 page 467 thereof.

Given under my hand and seal of office, at office in El Paso, Texas, this the 2 day of Oct. A.D., 1961.

J. W. FIELDS
County Clerk,
By ANTONIO CHAVEZ,
Deputy.

(Seal)

Filed for record June 24, 1952 at 1 o'clock P.M. Martha L. McLure, Clerk, County Court, Hudspeth Co., Tex. By ..... Deputy.

The State of Texas,
County of Hudspeth.

I, Martha L. McLure Clerk of the County Court in and for said County, do hereby certify that the foregoing Affidavit of Heirship Dated the 18th day of June, 1952, with its certificate of authentication, was filed for Record in my office, the 24th day of June, 1952, at 1 o'clock P.M. and duly Recorded the 24th day of June, 1952, at 4 o'clock P.M., Deed Record of said County, in Vol. 54 on Page 101.

Witness my hand and the seal of the County Court of said County at office in Sierra Blanca, Texas, the day and year last above written.

MARTHA L. McLURE,
Clerk, County Court Hudspeth County,
By .....,
Deputy.

(Seal)

85492 Aff. D. H. Heineman as to D. G. Heineman, dec'd. Filed for Record Jul. 14, 1952, at 9:10 o'clock A. M. Raymond L. Tellers Jr., County Clerk, El Paso Co., Texas By W. T. Duncan Deputy.

County Clerk's Office of El Paso County Texas, dated this 2 day of Oct.

I, J. W. Fields, County Clerk of El Paso County, Texas and Antonio Chavez, his deputy, further Certify that we are the officers who have the custody of the filed original official records from which these ture Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we hereto set our hands and affix the seal of said office the day and date first above written.

J. W. FIELDS,
(J. W. Fields),
County Clerk of El Paso
County, Texas,
ANTONIO CHAVEZ,
(Antonio Chavez),
Deputy.

(Seal)

PLAINTIFF'S EXHIBIT No. 32.

July 24, 1952.

Mr. Greenberry Simmons
Western Lodge
Box 647
Van Horn, Texas

Dear Mr. Simmons:

This is in reply to your telephone conversation with Mr. Leggott on July 21, 1952 in regard to the rein-

statement of Section 235, L. E. Munday Survey, and the N/2 of Section 240, N. D. Mundy Survey, both in El Paso County. Texas.

With reference to the reinstatement of forfeited accounts as set out under the provisions of Article 5326, Revised Civil Statutes, in order to reinstate a forfeited account, the forfeiting owner, his heirs or assigns, must exercise such right within five years from the date of forfeiture. To exercise such rights the application to reinstate and also payment of all interest and penalty must be received in the five year period.

In considering this matter, our attorneys have decided to reject the applications to reinstate the above described lands and the applications were not received until July 23. Due to this fact, your applications are being returned together with your two payments received on July 23.

I am also returning your application to reinstate Section 24, Block 70, Township 1, in Hudspeth County together with your check in the amount of $1,158.11 and a signed check for blank amount.

Sincerely yours,

BASCOM GILES,
Commissioner of the General Land Office

CRL:jw
Encs.

General Land Office, Austin, Texas October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this

office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Copies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT No. 32A.

General Land Office State of Texas, Austin 14.

Bascom Giles, Commissioner
Dennis Wallace, Chief Clerk

July 24, 1952

Mr. Greenberry Simmons
Western Lodge
Box 647
Van Horn, Texas

Dear Mr. Simmons:

This is in reply to your telephone conversation with Mr. Leggott on July 21, 1952 in regard to the reinstatement of Section 235, L. E. Mundy Survey, and the N/2 of Section 240, N. D. Mundy Survey, both in El Paso County, Texas.

With reference to the reinstatement of forfeited accounts as set out under the provisions of Article 5326, Revised Civil Statutes; in order to reinstate a forfeited account, the forfeiting owner, his heirs or assigns, must exercise such right within five years from the date of forfeiture. To exercise such rights the application to reinstate and also payment of all interest and penalty must be received in the five year period.

In considering this matter, our attorneys have decided to reject the applications to reinstate the above described lands and the applications were not received until July 23. Due to this fact, your applications are being returned together with your two payments received on July 23.

I am also returning your application to reinstate Section 24, Block 70, Township 1, in Hudspeth County together with your check in the amount of $1,158.11 and a signed check for blank amount.

Sincerely yours,

BASCOM GILES

(Bascom Giles),

Commissioner of the General Land Office

CRL:jw
Encs.

THE GENERAL LAND OFFICE
STATE OF TEXAS

[illegible]
BASCOM GILES, COMMISSIONER
OF THE GENERAL LAND OFFICE, AUSTIN, TEXAS

STATE OF TEXAS
[illegible]

Before me, the undersigned authority, on this day personally appeared Greenberry Simmons who, upon his oath, by me duly sworn, deposes and says that he is the owner or legal representative of Greenberry Simmons, Ky. Home Life Bldg., Louisville, Ky. (Name) (Address) the owner of the following described land in El Paso County, Texas:

Survey	Block	Abstract	Patentee	Acres
K/2 of Survey 240	S.P.R.R.	9932	Nellie D.Mundy	328:65

That the above land has been forfeited for nonpayment of interest and affiant hereby tenders all delinquent interest and requests that this tract be reinstated in accordance with the provisions of Article 5326 of the Revised Civil Statutes of 1925.

[illegible]
Ky.Home Life Bldg.,Louisville,Ky.
(Address)

Sworn to and subscribed before me this [illegible] day of [illegible] A.D. 19[illegible]

(SEAL)

[illegible]
Notary Public in and for the County of [illegible] State of Texas

PLAINTIFF'S EXHIBIT
NO.32B
ORIGINAL IN
COURT SAFE

LOUISVILLE, KY. 7-16 19[illegible] NO [illegible]

CITIZENS FIDELITY BANK AND TRUST COMPANY 21-19/800

PAY TO THE [illegible]

who upon being duly sworn states on ... Greenberry Simmons, Ky. Home Life Bldg., Louisville, Ky.
or legal representative of ... (Name) (Address), the owner of the following
described land in El Paso County, Texas:

Survey	Blk	Twp	Cert	Grantee	Acres
N/2 of Survey 240	B.F.7219		Abstract 9932	Nellie D. Mundy	328.65

That the above land has been forfeited for nonpayment of interest and affiant hereby tenders all delinquent interest ... and requests that this tract be reinstated in accordance with the provisions of Article 5326 of the ... Statutes of 1925.

147016

Greenberry Simmons [illegible] Affiant

Ky. Home Life Bldg., Louisville, Ky. Address

Sworn to and subscribed before me this 17th day of July A. D. 19[illegible]

(SEAL) Frankie Hacker Co. Clerk
Notary Public in and for the County of
Culberson, State of Texas.
By Virginia Torres, Deputy

PLAINTIFF'S EXHIBIT
NO. 32B
ORIGINAL IN
COURT SAFE

LOUISVILLE, KY., 7-18 19[illegible] NO. [illegible]

CITIZENS FIDELITY BANK AND TRUST COMPANY 21-10/550

PAY TO THE ORDER OF General Land Office $430.00

Four hundred thirty and 00/100 DOLLARS

FOR Interest for reinstatement of N/2 survey 240 Nellie D. Mundy grantee of Patent

Greenberry Simmons

PLAINTIFF'S EXHIBIT
NO. 32 C
ORIGINAL IN
COURT SAFE

15

THE GENERAL LAND OFFICE

STATE OF TEXAS

BASCOM GILES, Commissioner
LYONS WALLACE, Chief Clerk

TO BASCOM GILES, COMMISSIONER
OF THE GENERAL LAND OFFICE, AUSTIN, TEXAS

STATE OF TEXAS,
County of Culberson

Before me, the undersigned authority, on this day personally appeared Greenberry Simmons who upon being duly sworn states on oath: That he is the owner or legal representative of Greenberry Simmons, Ky. Home Life Bldg. Louisville, Ky. (Name) (Address) the owner of the following described land in El Paso County, Texas:

No.	Blk.	Twp.	Grantee	Acres
All of Survey 235	S.F.7230		Laura E. Mundy	292

That the above land has been forfeited for nonpayment of interest and affiant hereby tenders all delinquent interest and requests that this tract be reinstated in accordance with the provisions of Article 5326 of the Revised Civil Statutes of 1925.

Greenberry Simmons
Affiant

Ky. Home Life Bldg., Loisville, Ky.
Address

Sworn to and subscribed before me this 7th day of July A. D. 19 52

(SEAL)

Notary Public in and for the County of Culberson, State of Texas

PLAINTIFF'S EXHIBIT
NO. 32 D
ORIGINAL IN
COURT SAFE

LOUISVILLE, KY., 7-18 1952 No. [illegible]

CITIZENS FIDELITY BANK AND TRUST COMPANY 21-10/500

PAY TO THE ORDER OF General Land Office $ 251.62

Two hundred fifty one and 62/100 ———— DOLLARS

of Texas, representative of (Name) (Address) , and owner of the following described land in El Paso County, Texas:

Sec	Blk	Twp	Cert	Grantee	Acres
All of Survey 235	S.F.7230			Laura E. Mundy	292

That the above land has been forfeited for nonpayment of interest and affiant hereby tenders all delinquent interest and requests that this tract be reinstated in accordance with the provisions of Article 5328 of the Revised Civil Statutes of 1925.

Galenburg Simmons
Affiant

Ky. Home Life Bldg., Louisville, Ky.
Address

Sworn to and subscribed before me this 7th day of July A. D. 19 52

(SEAL)

Fred Walker, Co. Clerk
Notary Public in and for the County of Jefferson, State of Texas.
By Lyman Henry Deputy

PLAINTIFF'S EXHIBIT
NO. 32 D
ORIGINAL IN
COURT SAFE

LOUISVILLE, KY. 7-18 1952 No. [illegible]

CITIZENS FIDELITY BANK AND TRUST COMPANY 21-10/500

PAY TO THE ORDER OF General Land Office $ 251.62

Two hundred fifty one and 62/100 ———— DOLLARS

FOR Interest for reinstatement of survey 235, Laura E Mundy, grantee El Paso Co.

Galenburg Simmons

PLAINTIFF'S EXHIBIT
NO. 32 E
ORIGINAL IN
COURT SAFE

PLAINTIFF'S EXHIBIT
NO. 32F
ORIGINAL IN
COURT SAFE

PLAINTIFF'S EXHIBIT
NO. 32 G
ORIGINAL IN
COURT SAFE

LOUISVILLE, KY., 7-16 19 5[illegible] NO. [illegible]

CITIZENS FIDELITY BANK AND TRUST COMPANY 91-10/800

PAY TO THE ORDER OF General Land Office $1158"

One Thousand one hundred fifty eight and 11/100 ——— DOLLARS

FOR Remittance of Sec. 24, Blk 70 T1, T+P RRS. Hardeman Co Tx
Interest

Greenberry Simmons

PLAINTIFF'S EXHIBIT
NO. 32 G
ORIGINAL IN
COURT SAFE

LOUISVILLE, KY., 7-16 19 52 NO.

CITIZENS FIDELITY BANK AND TRUST COMPANY 21-10/800

PAY TO THE ORDER OF General Land Office $1158.11

One Thousand one hundred fifty eight and 11/100 ——— DOLLARS

FOR Remittance of Int. Dec. 24, 1951 70 T1, T+PRRS. Hedgpeth & Ux

Greenberry Simmons

PLAINTIFF'S EXHIBIT
NO. 32 H

LOUISVILLE, KY., 7-16 19 52 NO.

CITIZENS FIDELITY BANK AND TRUST COMPANY 21-10/800

PAY TO THE ORDER OF General Land Office $ ———

——— DOLLARS

FOR Remittance of Int. Dec 24, 1951 70 T1 T+PRRS. Hedgpeth

Greenberry Simmons

PLAINTIFF'S EXHIBIT No. 33.

September 6, 1952.

Mr. Greenberry Simmons
Pine Cone Inn
Box 175
Cloudcroft, N. M.

Dear Mr. Simmons:

I have your letter of September 3, 1952 in regard to Section 24, Block 70, Township 1, T. & P. Ry. Co. in Hudspeth County, Texas.

In reply to your three questions I wish to inform you as follows:

A. The application to reinstate was made by Mr. Channel and all interest has been paid in advance to November 1, 1952.

B. The grazing lease expires on January 9, 1953 and on that date the sales contract will be reinstated.

C. There is on file in this office a deed from D. G. Heineman to R. J. Channel. The deed is dated April 11, 1940 and was filed in this office on July 11, 1952. This office does not require deeds transferring title from one person to another to be filed in this office. If you are satisfied with your title as recorded in the County Clerk's office of Hudspeth County, you should have no fear or worry. In the event patent is issued, same would be issued in the name of D. G. Heineman, the original purchaser. After patent is issued, all title

inures to the benefit of the legal owners as shown on the County Clerk's records.

Sincerely yours,
DENNIS WALLACE,
Chief Clerk, Acting Commissioner of the General Land Office

CRL:jw
File: 149470

General Land Office, Austin, Texas October 18, 1961.

I, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse side hereof is a true and correct copy of the original of this instrument now on file in this office together with all indorsements thereon and further certify that I am the officer who has the custody of the filed original official records from which these true Certified Cipies were made.

In Testimony Whereof, I, hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY SADLER,
(Jerry Sadler),
Commissioner of the General Land Office.

(Seal)

PLAINTIFF'S EXHIBIT No. 33-A.

General Land Office
State of Texas
Austin 14

Bascom Giles, Commissioner
Dennis Wallace, Chief Clerk

Tel 21196
September 6, 1952

Mr. Greenberry Simmons
Pine Cone Inn
Box 175
Cloudcroft, N. M.

Dear Mr. Simmons:

I have your letter of September 3, 1952 in regard to Section 24, Block 70, Township 1, T. & P. Ry. Co. in Hudspeth County, Texas.

In reply to your three questions, I wish to inform you as follows:

A. The application to reinstate was made by Mr. Channel and all interest has been paid in advance to November 1, 1952.

B. The grazing lease expires on January 9, 1953 and on that date the sales contract will be reinstated.

C. There is on file in this office a deed from D. G. Heineman to R. J. Channel. The deed is dated April 11, 1940 and was filed in this office on July 11, 1952. This office does not require deeds transferring title

from one person to another to be filed in this office. If you are satisfied with your title as recorded in the County Clerk's office of Hudspeth County, you should have no fear or worry. In the event patent is issued, same would be issued in the name of D. G. Heineman, the original purchaser. After patent is issued, all title inures to the benefit of the legal owners as shown on the County Clerk's records.

Sincerely yours,
DENNIS WALLACE,
(Dennis Wallace),
Chief Clerk, Acting Commissioner of the General Land Office.

CRL:jw
File: 149470

Brief for Plaintiff on Plaintiff's Motion for Summary Judgment; Omitted from the Printed Record pursuant to Appellant's Amended Designation as to printing Record heretofore copied at page 1.

* * * * * * * *

DEFENDANT'S FIRST AMENDED ANSWER.

(Title Omitted.)

Comes now Defendant, City of El Paso, and for Answer says:

Motion to Dismiss for Failure to Join an Indispensable Party.

The State of Texas is an indispensable party to this action. The State's interest is such that no final judg-

ment for Plaintiff could be entered herein without injuriously affecting the State's interest. The State of Texas in its patents to Defendant, reserved all minerals underlying the lands in question, including the right to execute oil, gas and mineral leases covering such minerals, and the right to receive all rents, royalties, and bonuses accruing by virtue of such leases. If the Plaintiff should be successful in his suit, the State would no longer be entitled to execute oil, gas and mineral leases covering the minerals underlying the lands in question, and further, the State would only be entitled to one-half of the rents, royalties and bonuses accruing from such leases. Further, Defendant, as record owner of such property, has conveyed a strip of land corssing such property to the State of Texas for road purposes. Thus, the State of Texas is in effect a co-tenant with Defendant and should be made a party to this action.

Wherefore, premises considered, Defendant prays that the State of Texas either be made a party Defendant to this suit, or that this suit be dismissed.

Answering further herein, if need be, the Defendant states:

I.

Defendant admits the allegations contained in Paragraph 1 of Plaintiff's Complaint.

II.

In reply to Paragraph 2 of Plaintiff's Complaint, Defendant states that it is without sufficient informa-

tion or knowledge to form a belief as to the truth of the allegations contained therein, and therefore denies same and demands strict proof thereof.

III.

Defendant denies all the allegations contained in Paragraph 3 of Plaintiff's Complaint.

IV.

In reply to Paragraph 4 of Plaintiff's Complaint, Defendant admits that it claims an estate, or interest, in the land in question, but denies all other allegations contained therein.

V.

Defendant denies that Plaintiff is entitled to any of the relief prayed for in his Complaint.

Answer by Way of New Matter.

VI.

Defendant states that on November 14, 1955, the General Land Commissioner awarded, without condition of settlement, the North Half (N/2) of Survey 240, SF 7219, Nellie D. Mundy Survey, consisting of 328.65 acres of land in El Paso County, Texas, to the Public Service Board, City of El Paso. On January 26, 1956, said land was patented from the State of Texas to the Public Service Board City of El Paso, by Patent No. 492, Volume 25-B, Abstract No. 10,078, with all minerals reserved to the State of Texas.

Defendant further states that on November 14, 1955, the General Land Commissioner awarded, without condition of settlement, Section 235, SF 7230, Laura E. Mundy Survey, consisting of 292 acres of land in El Paso County, Texas, to the Public Service Board, City of El Paso. On January 16, 1956, said section was patented from the State of Texas to the Public Service Board, City of El Paso, by Patent No. 491, Volume 25-B, Abstract No. 10,077, with all minerals reserved to the State of Texas.

Since acquiring the lands described hereinabove Defendant has not conveyed fee title to same.

First Defense.

VII.

Any claim Plaintiff may have had in and to the lands in question is barred by the provisions of Article 5329, Vernon's Annotated Texas Statutes (1925 Compilation).

Second Defense.

VIII.

Defendant has been in open, notorious, continuous, peaceable possession of the lands in question, under title, claiming same against the world for more than three years; consequently, any claim Plaintiff may have had in and to said land is barred by virtue of Article 5507, Vernon's Annotated Texas Statutes (1925 Compilation).

Third Defense.

IX.

Defendant has been in open, notorious, continuous, peaceable possession of the lands in question, under title, claiming same against the world for more than five years; consequently, any claim Plaintiff may have had in and to said lands is barred by virtue of Article 5509, Vernon's Annotated Texas Statutes (1925 Compilation).

Fourth Defense.

X.

The lands in controversy were forfeited to the State of Texas on July 21, 1947, for non-p ment of interest. There have been no adverse claims or suits filed contesting title to such lands since the date of such forfeiture, until the date Plaintiff filed his suit. During the interim fifteen-year period, intervening rights have attached to the lands in question; therefore, Plaintiff should be estopped from asserting any claim to said lands by virtue of the Doctrine of Laches.

Fifth Defense.

XI.

On or about June 15, 1956, Defendant, in good faith, for valuable consideration and without notice of Plaintiff's claim, purchased the lands in question. Since Defendant was and is a bona fide purchaser of such

lands, the equitable claim or interest of Plaintiff, if any, in such lands terminated as to Defendant.

Wherefore, premises considered, Defendant prays that Plaintiff's claim for relief be denied, that Defendant be allowed to go hence without day and with its costs.

Respectfully submitted,
HARDIE, GRAMBLING, SIMS & GALATZAN,
By WM. J. MOUNCE,
(William J. Mounce).

Filed Mar. 16, 1962.

Memorandum in Support of Defendant's Motion for Summary Judgment;

Plaintiff's Supplemental Brief in Reply to Defendant's Brief on Motion for Summary Judgment;

Omitted from the Printed Record pursuant to Designation as to printing Record copied at page 1.

• • • • • • • •

AFFIDAVIT.

(Title Omitted.)

Before me, the undersigned authority, on this day personally appeared Harold S. Long, known by me to

be a creditable person, who, having been duly sworn, upon oath deposes and says:

I am one of the attorneys for the Plaintiff above named; that Defendant and Plaintiff over 2-1/2 months ago both filed motions for Summary Judgments; that after both had filed briefs, Defendant filed its "First Amended Answer" in such answer and attached thereto a "Motion to Dismiss for Failure to Join an Indispensable Party."

The Plaintiff, alleges, in paragraph 2 of his complaint, that, involved was "the question of title to real estate located within this District" and that he was relying on Title 28 of the United States Code, Section 1655. (This Act was passed by Congress to handle cases where the Court has the res within his district and jurisdiction, and all parties having an interest are not before the Court. A mere interested party is not necessarily an indispensable party.) Affiant believes that the Court can enter an order with reference to this res (real estate) as to the interest claimed by the Plaintiff and the Defendant only, without affecting any other party's rights. Namely, to impress a trust on whatever interest this Defendant has in this res and order possession of the same to Plaintiff without prejudice to any other party's rights. However, if the Court is of the opinion that he cannot so do and that other parties are indispensable, the Plaintiff should have sufficient time to take such action by way of an amended complaint, or by making new parties that may be necessary to protect his interest and opportunity, so far as this suit is concerned, of disclaiming any right the Plaintiff has against the State

of Texas to the road right-of-way easement previously conveyed by the Defendant to the State. Such opportunity may prevent fatal error.

HAROLD S. LONG,
(Harold S. Long).

Subscribed and Sworn to on this, the 27th day of March, 1962, by the said Harold S. Long.

HELEN M. SALIGER,
(Seal) Notary Public, in and for El Paso County, Texas.

My commission expires: June 1, 1963.

MOTION AND PETITION OF PLAINTIFF FOR REHEARING.

(Title Omitted.)

Now comes the Plaintiff, above named and moves and petitions this Honorable Court, for a rehearing, under Rule 59 (a) (1) F.R. Civ. P., to set aside the order and Summary Judgment and granting the Defendant's motion for Summary Judgment, as stated by letter May 2, 1962, of his holdings and findings, and moves the Court to sustain Plaintiff's motion for Summary Judgment and also order for same, herewith attached, for the following reasons:

1. The Court erred in sustaining Defendant's motion for Summary Judgment.

2. The Court erred in failing to recognize that Plaintiff, as a matter of law, reinstated his forfeited lands in July 1952.

3. The Court erred in failing to recognize the source of Plaintiff's title, the settlers-vendee contracts with the State for the purchase of the lands in 1910, (Plaintiff's Exhibits No. 1 and No. 16) which were in process of execution for over 30 years before the Amendments of 1941 and 1951 and settled on by settlers for years and paid interest on same for over 30 years.

4. The Court erred in failing to recognize and apply the following principle: Settlers contracts and awards for public lands by the State, as part of their homesites, which were in the process of execution and interest paid on them for over 30 years, were too far executed, to permit subsequent legislation, giving State these valuable lands by adding additional limitations not in the statute, which was part of the Contracts and Awards at the time they were made in 1910.

5. The Court erred in failing to recognize the purpose and intent of the early Act of 1897, in getting the early settlers to settle upon the large amount of public lands owned by the State of Texas and the hardships they endured to live on these dry lands for three years in order to get them and during those hard years it was not intended that some forty-four years later that the First Party, the State, should add by amendment additional limitations, to their contractural rights. It is hard to imagine, what the ruling in this case will mean to all those settlers, their heirs and

vendees, who have the many purchase contracts still unmatured. Time and again the history and legislative intent of this Act has been made clear by the Texas Courts. A clear illustration is shown by the Supreme Court of Texas eleven years before the 1941 Amendment, in Freels v. Walker, 26 S.W. 2d 627, 628-629.

6. The Land Commissioner has general discretionary powers over the handling of public lands for the State, however, for over a half century, it has been well settled by the Texas Courts that he has no such discretion whatsoever after the settler-vendee has requested that his forfeited lands be reinstated under these purchase contracts.

7. The Land Commissioner, by his letter of July 24, 1952, attempted, without legal processes, to confiscate Plaintiff's lands and the Court erred in recognizing the incorrect status of the land titles at that date, July 24, 1952, in permitting him to do so.

8. The findings and holdings of the Court are contrary to the well settled Texas cases, for over half a century, construing the Act of 1897 (Article 5326) relating to the reinstatement of forfeited public land contracts.

9. For over a half century it has been settled by the Texas Courts in construing Article 5326 from the date of its passage in 1897 to date, that the State alone, without representing a third party rights, cannot deny a settler-vendee the right to reinstate his forfeited lands, where there are no third party rights present and the State had not sold such lands prior to Plaintiff's request to reinstate such lands.

10. If the State had no "such right" to act alone in denying Plaintiff's reinstatement of his forfeited lands, before the Amendments of 1941 and 1951, which added "Such right must be exercised within five (5) years from the date of the forfeiture"; and was given "such right" to act alone without representing present third party rights by this one sentence, then these amendments gave the State more than remedial rights, and these subsequent amendments are unconstitutional in violation of Article 1, Section 10, impairing the prior obligations of these contracts. (Settler-vendee purchase contracts and awards of 1910, Plaintiff's Exhibits No. 1 and No. 16. The only rights Plaintiff obtained by his recorded deeds were obtained under these purchase contracts and awards.)

11. Defendant was a subsequent purchaser of these lands involved, with notice of Plaintiff's prior constructive possession.

12. The Court erred in recognizing the validity of Defendant's subsequent patents issued, in violation of the Texas Constitution, Article 14, Section 2, by refusing to recognize Plaintiff's chain of title covered by all of the official records herein (Plaintiff's Exhibits Nos. 1-33), including all the prior recorded deeds in the "County Records" and all the "evidence of the appropriation of which is * * * in the General Land Office," official records in both offices running back for over 40 years before Defendant's Patents were issued; such constitutional provisions provide as follows:

"All genuine land certificates heretofore or hereafter issued shall be * * * patented only upon vacant

and unappropriated public domain, and not upon land titled or equitably owned under the color of title from the sovereignty of the state, evidence of the appropriation of which is on the County Records or in the General Land Office." Texas Const. Art. 14, Sec. 2.

13. The Court erred in refusing to return the peaceful possession of Plaintiff's lands unto the Plaintiff.

14. The Court erred in not following the principles stated by the Fifth Circuit, in Southern Pine Lumber Co. v. Consolidated Louisiana Lumber Co., 217 F. 719, 723-725; Drumwright, et al. v. Texas Sugarland Co, et al., 16 F. 2d 657, 658, Cert. denied, 274 U.S. 749.

15. The Court erred in failing to apply the following principle: The Amended Acts of the Texas Legislature in 1941 and 1951 (Vernon's, Tex. Civ. Statutes, Annotated, 1925, Art. 5326) providing that such right must be exercised within five (5) years, while the previous Act of 1897 had no such provision, is unconstitutional as to the settlers Glenn and Kilpatrick's contracts and awards made with the State in 1910 and as admitted by the Defendant as not maturing until July 20, 1952, and is still in existence as reinstated then; the previous existing Statute of 1897, which prescribed no time limit but prescribed other limitations, being applicable to such previous made contracts and awards in 1910.

16. The Court erred in ignoring the principle applied by the Texas Courts for over half a century that this reinstatement of forfeited land statute was passed to assist the settler-vendee and not the State, and is thus to be liberally construed in favor of the settler-

vendee instead of the State. Cruzan v. Walker, 26 S.W. 2d 908, 909; Anderson, et al. v. Neighbors, 59, S.W. 543, 545, (1900); Gulf Production Company v. State, 231 S.W. 124, 131-132, 135; Davis v. Yates, 133 S.W. 281, 284-286; Freels v. Walker, 26 S.W. 2d 627, 630.

17. The Court erred in refusing the injunction required by the Plaintiff's prayer, in his complaint, in joining the Defendant from interferring with Plainiff's peaceful prior possession of his lands.

Wherefore the Plaintiff prays that a new hearing may be granted and that the Defendant's Motion for Summary Judgment be denied, and that Plaintiff's Motion for Summary Judgment be granted and that the attached order granting Plaintiff's Summary Judgment be entered.

Respectfully submitted,
HAROLD S. LONG,
(Harold S. Long),
GREENBERRY SIMMONS,
(Greenberry Simmons),
Attorneys for Plaintiff.

I, Harold S. Long, certify that I have delivered a copy of this Motion, attached order and excerpts from the contracts involved, to Mr. William J. Mounce, Attorney for Defendant, this 18th day of May, 1962.

HAROLD S. LONG,
(Harold S. Long).

Pertinent Excerpts Involved, Showing that Chapter 129, Act of May 19, 1897, is Part of these Two Contracts with the State. The Application, Obligation, and Award of 1910 are all in one Contract

for each Settler Glenn and Kilpatrick, Predecessors of this Plaintiff, and the only Rights Granted to him in his Recorded Deeds.

"Application for Land as Additional to Home Tract Applied For."

"To J. T. Robinson, Commissioner General Land Office:

"I hereby[1] APPLY TO PURCHASE UNDER THE PROVISION OF * * * CHAPTER 129, ACT OF MAY 19, 1897, * * * the following land situated in El Paso County, Texas * * * Survey 240 * * * Nellie D. Mundy, Grantee * * * I will in good faith become in person an actual bona fide settler on my home tract or on some portion of the land I purchase within 90 days from the date my application for my home tract is accepted * * *."

"(Signed) W. H. Glenn," Applicant sworn to and subscribed before me, this 25 day of January, 1910 * * *."

"Obligation."

"* * * For value received, I, the undersigned, do promise to pay to the State of Texas the sum of nine hundred thirty six and 00/100 Dollars with interest thereon as hereinafter specified, the same being for the balance of purchase money for the following described tract of land[2], PURCHASED BY ME THIS DAY OF THE STATE OF TEXAS, IN ACCORDANCE

Notes 1, 2. Emphasis added.

WITH THE PROVISIONS OF * * * AND CHAPTER 129, ACTS OF MAY 19, 1897 * * * to-wit: Survey No. 240 * * * Grantee Nellie D. Mundy in El Paso County, Texas."

"The annual interest of three per cent upon all unpaid principal, * * *. And[3] IT IS EXPRESSLY UNDERSTOOD THAT I AM TO COMPLY STRICTLY WITH ALL THE CONDITIONS, LIMITATIONS AND REQUIREMENTS, AND AM SUBJECT TO AND ACCEPT ALL THE PENALTIES CONTAINED IN THE ABOVE RECITED ACTS." * * *

(Signed) "W. H. GLENN"

* * * * * * * *

(On back of the contract) "Awarded Apr. 30, 1910.

(Signed) "J. T. ROBINSON,
"Commissioner General Land Office."

Above is quoted from Plaintiff's Exhibit No. 1. It is the same for Plaintiff's Exhibit No. 16, signed by John B. Kilpatrick for Survey 235, Laura E. Mundy, Grantee. Both of these Plaintiffs' Exhibits are certified copies from the General Land Office files and have been admitted as genuine by the Defendant.

The applications say: "I hereby apply to purchase under the provisions of * * * Chapter 129, Act of May 19, 1897 * * *"

Note 3, Emphasis added.

The "Obligations" Contracts say: "* * * purchased by me this day of the State of Texas, in accordance with the provisions of * * * Chapter 129, Acts of May 19, 1897 * * *".

(Signed) "W. H. GLENN".

* * * * * * * * * *

(On back of the contract) "Awarded Apr. 30, 1910"
(Signed) "J. T. ROBINSON,"
"Commissioner, General
Land Office".

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

In the United States District Court, for the Western District of Texas, El Paso Division.

Greenberry Simmons, Plaintiff,
vs. Civil No. 2334.
City of El Paso, Defendant.

The above entitled cause came before the Court on both Defendant's and Plaintiff's Motions for Summary Judgments.

Messrs. Harold S. Long and Greenberry Simmons, of El Paso, Texas, and Louisville, Ky., appeared in behalf of the Plaintiff; and Mr. William J. Mounce, of El Paso, Texas, appeared in behalf of the Defendant.

The facts necessary to determine this motion appear to be the following:

The Plaintiff reinstated his forfeited lands, herein involved, in July, 1952, and has title to such lands, upon payment of back interest previously tendered and any other interest due and principal, according to his predecessors' contracts of 1910.

Plaintiff is granted the relief prayed for in his Complaint, and Defendant is enjoined from interferring with the peaceful possession of the Plaintiff, to his lands.

The Defendant's Motion for Summary Judgment is denied.

On the Complaint, Answer, Request for Admissions and Affidavits it is established that there is no genuine issue as to any material facts, that the Defendant has no claim and that the Plaintiff is entitled to judgment as a matter of law.

Therefore, it is ordered that judgment be entered in favor of the Plaintiff with cost to be taxed.

Dated .... day of ..... 1962.

By the Court:

....,

Judge.

Filed May 18, 1962.

SUMMARY JUDGMENT.

In the United States District Court for the Western District of Texas, El Paso Division.

Greenberry Simmons, Plaintiff,
vs. No. 2334 Civil.
City of El Paso, Defendant.

Be It Remembered That on March 28, 1962 came on to be heard and considered Defendant's motion for summary judgment and Plaintiff's counter motion for summary judgment; and the parties appearing through their respective counsel, and the Court having read the pleadings, the affidavits and admissions filed herein, heard the argument of counsel and carefully considered the briefs, concludes that the material facts in this case are undisputed, and that Defendant's motion for summary judgment should be granted, and Plaintiff's counter motion for summary judgment should be denied.

It is, Therefore, Orderee, Adjudged and Decreed that Plaintiff's counter motion for summary judgment should be, and the same is hereby denied.

It is Further Ordered, Adjudged and Decreed that be, and the same is hereby granted, and that Plaintiff have and recover nothing by his action, and that Defendant go hence without day and with its costs. All costs shall be taxed against Plaintiff.

Plaintiff excepts to all of the foregoing.

Signed and Entered this 18th day of May, 1962.

R. E. THOMASON,
Judge.

Approved as to Form:

HAROLD S. LONG,
Attorney for Plaintiff,
WM. J. MOUNCE,
(William J. Mounce),
Attorney for Defendant.

Filed May 18, 1962.

ORDER.

(Title Omitted.)

Be It Remembered, that on this, the 21 day of May, A.D., 1962, came on to be heard and considered the Plaintiff's Motion and Petition for Rehearing, and the Court, having considered the Motion, is of the opinion that the original Order granting the Defendant's Motion for Summary Judgment and denying that of the Plaintiff, is a correct disposition of the case and that the Motion for Rehearing should be denied.

It is, Therefore, Ordered, Adjudged and Decreed, that the Motion and Petition of Plaintiff for Rehearing be, and the same is, hereby denied in all things.

To which action on the part of the Court, Plaintiff then and there excepted and gave notice of appeal; which is hereby granted, and all of the records, including all of the original papers, exhibits and affi-

davits are Ordered sent to the Clerk of the Court of Appeals for the Fifth Circuit.

Signed and Entered on the Day and Year above Written.

R. E. THOMASON,
Judge.
WM. J. MOUNCE,
Atty. for Defendant.

Approved as to Form:

HAROLD S. LONG,
Atty. for Plaintiff.

Filed May 21, 1962.

BOND.

(Title Omitted.)

Greenberry Simmons, Appellant herein, and Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland, with its home office in the City of Baltimore, appearing and submitting to the jurisdiction of the Court, hereby undertakes, for themselves, and each of them, their, and each of their, heirs, executors, administrators, successors and assigns, to make good all taxable costs and charges, not exceeding the sum of Two Hundred Fifty Dollars ($250.00), that the Appellees may be put to or allowed if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified.

The said Surety hereby irrevocably appoints the Clerk of this Court as its Agent, upon whom any papers affecting its liability on this undertaking may be served.

Signed, Sealed and Delivered, this 22nd day of May, A.D., 1962.

GREENBERRY SIMMONS,
(Greenberry Simmons),
Principal,
FIDELITY AND DEPOSIT
COMPANY OF MARYLAND;
By JOHN G. LANDER,
(Seal) Authorized Agent, Surety.

Filed May 22, 1962.

Power of Attorney

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE: BALTIMORE, MD.

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WM. H. C. GRIFFITH, Vice-President, and J. J. MOORE, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which reads as follows:

"The President, or First Vice-President, or Second Vice-President, or any one of the additional Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Resident Assistant Secretaries, and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgments, decrees, mortgages and instruments in the nature of mortgages, and also all other instruments and documents which the business of the Company may require, and to affix the seal of the Company thereto."

does hereby nominate, constitute and appoint JOHN G. PONDER, OF EL PASO, TEXAS.....

its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed:

I. Bonds and undertakings for faithful performance of duty to be filed in any Court of any State of the United States, or in any United States Court, each in a penalty not to exceed the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000) as follows: For administrators and executors; for commissioners, referees and trustees for the sale of property; for receivers and trustees in bankruptcy proceedings; for receivers in equity; for persons and corporations exercising powers of sale in deeds, mortgages, and other written instruments covering property located in any State of the United States, EXCEPT ASSIGNMENTS FOR BENEFIT OF CREDITORS.

II. Bonds and undertakings to be filed in any Court as aforesaid, each in a penalty not to exceed the sum of TWENTY-FIVE HUNDRED DOLLARS ($2,500) as follows: For the payment of costs; for petitioning creditors; for plaintiffs in attachment, garnishment, sequestration and replevin suits; for removal of suits from State to Federal Courts.

III. Bonds and undertakings for Trustees under Will, Conservators, Committees for Incompetent Persons and Guardians for faithful performance of duty, and to be filed in any Court as aforesaid, each in a penalty not to exceed the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000).

IV. Bonds each in a penalty not to exceed the sum of TEN THOUSAND DOLLARS ($10,000) required of State, County, Township or Municipal Officials, of any State of the United States, whether elected or appointed, except those for Treasurers, Deputy Treasurers, Tax Collectors, Deputy Tax Collectors, Sheriffs, Deputy Sheriffs, Police Constables and Justices of Peace.

V. Bonds for Notaries Public required by the Laws of any State of the United States, each in a penalty not to exceed the sum of FIVE THOUSAND DOLLARS ($5,000).

VI. License bonds, each in a penalty not to exceed the sum of FIVE THOUSAND DOLLARS ($5,000) required by the Statute of any State of the United States or by Ordinance of any Municipality in any State.

THIS POWER OF ATTORNEY DOES NOT INCLUDE BONDS ON BEHALF OF INDEPENDENT EXECUTORS AND BONDS ON BEHALF OF COMMUNITY SURVIVORS.....

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Maryland, in their own proper persons.

The said Assistant Secretary does hereby certify that the aforegoing is a true copy of Article VI Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 18TH day of AUGUST, A.D. 19 53

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

(SIGNED) J. J. MOORE
(SEAL) *Assistant Secretary*

By WM. H. C. GRIFFITH
Vice-President

STATE OF MARYLAND
CITY OF BALTIMORE ss:

On this 18TH day of AUGUST, A.D. 19 53, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.

(SIGNED) DOLORES DEMMA
(SEAL) *Notary Public*

CERTIFICATE I, A. R. FROMM, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MY COMMISSION EXPIRES MAY 2, 1955

III. Bonds and undertakings for Trustees under Will, Conservators, Committees for Incompetent Persons and Guardians for faithful performance of duty, and to be filed in any Court as aforesaid, each in a penalty not to exceed the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000).

IV. Bonds each in a penalty not to exceed the sum of TEN THOUSAND DOLLARS ($10,000) required of State, County, Township or Municipal Officials, of any State of the United States, whether elected or appointed, except those for Treasurers, Deputy Treasurers, Tax Collectors, Deputy Tax Collectors, Sheriffs, Deputy Sheriffs, Police Constables and Justices of Peace.

V. Bonds for Notaries Public required by the Laws of any State of the United States, each in a penalty not to exceed the sum of FIVE THOUSAND DOLLARS ($5,000).

VI. License bonds, each in a penalty not to exceed the sum of FIVE THOUSAND DOLLARS ($5,000) required by the Statute of any State of the United States or by Ordinance of any Municipality in any State.

THIS POWER OF ATTORNEY DOES NOT INCLUDE BONDS ON BEHALF OF INDEPENDENT EXECUTORS AND BONDS ON BEHALF OF COMMUNITY SURVIVORS.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Maryland, in their own proper persons.

The said Assistant Secretary does hereby certify that the aforegoing is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 18TH day of AUGUST, A.D. 19 53

ATTEST: **FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

(SIGNED) J. J. MOORE — *Assistant Secretary*
(SEAL)

By W. H. C. GRIFFITH — *Vice-President*

STATE OF MARYLAND
CITY OF BALTIMORE } ss:

On this 18TH day of AUGUST, A.D. 19 53, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.

(SIGNED) DOLORES DEMMA
(SEAL) *Notary Public*

MY COMMISSION EXPIRES MAY 2, 1955

CERTIFICATE

I, A. R. FROMM, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the attached Power of Attorney dated AUGUST 18TH, 19 53, in behalf of JOHN G. PONDER of EL PASO, TEXAS is a true and correct copy and that same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said W. H. C. GRIFFITH and J. J. MOORE, who executed the attached Power of Attorney as Vice-President and Assistant Secretary respectively, were on the date of the execution of the attached Power of Attorney the duly elected Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and that the said W. H. C. GRIFFITH was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact or to authorize any person or persons to execute on behalf of the Company any bonds, recognizances, stipulations, undertakings, deeds, releases of mortgages, contracts, agreements and policies, and to affix the seal of the Company thereto as provided in said Article VI, Section 2 of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this TWENTY-SECOND day of MAY, 19 62

L1427 Ctf.

A. R. Fromm
Assistant Secretary

5-F 124

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Received May 24, 1962.

Filed Jun. 20, 1962.

In the United States District Court, for the Western District of Texas, El Paso Division.

Greenberry Simmons, Plaintiff,
vs. No. 2334 Civil.
City of El Paso, Defendant.

Notice is hereby given that Greenberry Simmons, Plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Fifth Circuit from the order of May 18, 1962 granting the Defendant, City of El Paso, motion for Summary Judgment and denying the Plaintiff's motion for Summary Judgment; and from the order of May 21, 1962 denying the Plaintiff's motion and petition for a re-hearing of the final Judgment of May 18, 1962. This appeal is taken from the United States District Court for the Western District of Texas, El Paso Division.

HAROLD S. LONG,
(Harold S. Long),
Caples Bldg.,
El Paso, Texas.

GREENBERRY SIMMONS,
(Greenberry Simmons).
Ky. Home Life Bldg.,
Louisville 2, Ky.

Filed May 22, 1962.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Filed Jun. 20, 1962.

(Title Omitted.)

Appeal from the United States District Court for the Western District of Texas, El Paso Division, Civil Action No. 2334.

Come Greenberry Simmons, Appellant-Plaintiff, by his attorneys, and for the purpose of designation of the contents of the record on this appeal, requests the Clerk of the Court of Appeals to have printed all of the records filed in the District Court, by both Plaintiff and Defendant, including all of the Plaintiff's exhibits and affidavits.

The docket in District Court is as follows:

8-31-61—(1) Filed complaint in duplicate.

8-31-61—Issued summons and copy.

9-6-61—(2) Filed Return Summons exe. 9-1-61.

9-22-6—(3) Answer of City of El Paso in dup.

10-5-61—(4) Plaintiff's Request for Admissions by Defendant.

11-16-62—(5) Filed Response to Request for Admission in dup.

12-22-61—(6) Filed Defendant's Motion for Summary Judgment, in dup.

12-27-61—(7) Filed Plaintiff's Motion for Summary Judgment.

12-27-61—(8) Filed Plaintiff's Exhibits 32A-32G (in the vault).

1-15-62—(9) Filed Brief for Plaintiff on Plaintiff's Motion for Summary Judgment, in dup.

1-15-62—(10) Filed Certificate showing 2 copies of above brief mailed to Morris A. Galatzan, Attorney for Defendant.

3-16-62—(11) Filed Defendant's first amended answer, in dup.

3-16-62—(12) Filed memorandum in support of Defendant's Motion for Summary Judgment.

3-27-62—(13) Filed Plaintiff's Supplemental Brief in reply to Defendant's Brief on Motion for Summary Judgment, in dup.

3-27-62—(14) Filed Affidavit, in dup.

5-18-62—(15) Motion and Petition of Plaintiff for rehearing, in dup.

5-18-62—(16) Filed Summary Judgment for Defendant, City of El Paso.

5-21-62—Notices Mailed to counsel.

5-21-62—(17) Filed Order denying Motion and Petition of Plaintiff for re-hearing.

5-22-62—Notices of above order mailed to counsel.

5-22-62—(18) Filed appeal bond for the sum of $250.00.

5-22-62—(19) Filed Notice of Appeal, in dup.

HAROLD S. LONG,
(Harold S. Long),
Caples Bldg.,
El Paso, Texas.

GREENBERRY SIMMONS,
(Greenberry Simmons),
Attorneys for Appellant.
Kentucky Home Life Bldg.,
Louisville 2, Ky.

CLERK'S CERTIFICATE.

United States of America,
Western District of Texas.

I, MAXEY HART, Clerk of the United States District Court in and for the Western District of Texas, do hereby certify that the foregoing papers as shown in the index are the original papers filed in cause No. 2334 Civil Action, styled: Greenberry Simmons versus City of El Paso and directed to be sent up in the original as the same have been filed and recorded in this office.

Witness my official signature and the seal of said District Court, at office in the City of El Paso, Texas, this the 13th day of June, 1962.

MAXEY HART,
Clerk of said Court,
By PAULINE G. SILVEUS,
(Pauline G. Silveus),
Deputy.

(Seal)

[fol. 153] MINUTE ENTRY OF ARGUMENT AND SUBMISSION—November 28, 1962 (omitted in printing).

[fol. 154]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19754

GREENBERRY SIMMONS, Appellant,

versus

CITY OF EL PASO, Appellee.

Appeal from the United States District Court for the Western District of Texas.

OPINION—July 18, 1963

Before Rives, Jones and Brown, Circuit Judges.

JONES, Circuit Judge: Federal jurisdiction in this action was asserted on diversity of citizenship and under 28 U.S.C.A. § 1655. It is difficult to see how Section 1655 has anything to do with jurisdiction in this case but since diversity of citizenship and the jurisdictional amount of a [fol. 155] matter in controversy are present, the question need not be considered.

Predecessors of title of the appellant, Greenberry Simmons, on January 25, 1910, made written applications to purchase land in El Paso County, Texas, from the State of Texas, reciting in the applications that they were made "under the provisions of Chapter 47, Act of 1895, Chapter 129, Act of May 19, 1897, and other Texas statutes." The obligations of the applicants, who became purchasers of the lands, required the annual payment of one-fortieth of the principal and interest at three per cent. The obligations, accepted by the Texas Land Commissioner, recited the purchase of the described land "in accordance with the provisions of," the foregoing statutes of Texas.

The 1897 statute to which reference was made in the title instruments contained a provision that,

> "In any cases where lands have been forfeited to the State for the non-payment of interest, the purchasers or their vendees may have their claims reinstated on their written request, by paying into the treasury the full amount of interest due on such claim up to the date of reinstatement; provided, that no rights of third persons may have intervened. In all such cases the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred." Texas Act, 1897, Ch. 197.

[fol. 156] In 1941, the Texas Legislature reaffirmed the right to reinstate a contract of purchase after a forfeiture but imposed a five-year limitation period upon the exercise of the right with respect to forfeitures thereafter occurring. In the act it was provided:

> "In any case where lands may hereafter be forfeited to the State for non-payment of interest, the purchasers, or their vendees, heirs, or legal representatives, may have their claims reinstated on their written request, by paying into the Treasury the full amount of interest due on such claim up to the date of reinstatement, provided that no rights of third persons may have intervened. The right to reinstate shall be limited to the last purchaser from the State or his vendees or their heirs or legal representatives. Such right must be exercised within five (5) years from the date of the forfeiture, and the right to reinstate any claim heretofore forfeited by the Commissioner must be exercised within five (5) years from the effective date of this Act, but not thereafter." Texas Acts 1941, Ch. 191.

In 1951 this statute was amended but not, apparently, in any particular which is here pertinent. Texas Acts 1951, Ch. 59.

On July 21, 1947, the land was forfeited to the State for non-payment of interest. On July 23, 1952, the Land Commissioner of the State of Texas received from the appellant, who was the mesne grantee of the original purchasers, [fol. 157] applications to reinstate the claims to the lands, with checks for the unpaid interest. On July 24, 1952, the

Land Commissioner returned the applications and checks to the appellant with a letter in which it was said:

> "With reference to the reinstatement of forfeited accounts as set out under the provisions of Article 5326, Revised Civil Statutes, in order to reinstate a forfeited account, the forfeiting owner, his heirs or assigns, must exercise such right within five years from the date of forfeiture. To exercise such rights the application to reinstate and also payment of all interest and penalty must be received in the five year period.
>
> "In considering this matter, our attorneys have decided to reject the applications to reinstate the above described lands and the applications were not received until July 23. Due to this fact, your applications are being returned together with your two payments received on July 23."

On May 23, 1955, the Texas Legislature authorized the sale to the City of El Paso of fourteen thousand acres of land in El Paso County, including the lands claimed by the appellant. The lands were patented to the appellee City on January 26, 1956. Another statute of the State of Texas, enacted in 1921, contained a provision that "No sale made without condition of settlement shall be questioned by the [fol. 158] State or any person after one year from the date of such sale." Vernon's Ann. Tex. Stat. Art. 5329. The appellant brought an action in the nature of trespass to try title on August 31, 1961. The City asserted by defenses, the limitation of the 1941 and 1951 statutes, the bar of Article 5329, adverse possession, and that intervening rights and lapse of time had resulted in the appellant's claim being barred by laches. Both parties filed motions for summary judgment. The motion of the defendant was granted and judgment was entered that the appellant take nothing. From that judgment this appeal has been taken.

Although other issues are made by the claim asserted in the complaint and the defenses set out in the answer, only two of these require present consideration. First, we must decide whether Article 5329 cut off the right of the appellant to question the validity of the sale to the City of El Paso. If this statute does not bar the appellant, then

we must ascertain whether the statutes of 1941 and 1951 work an impairment of the obligation of the contract of purchase with the result that the tender of the delinquent payments before any intervening rights arose reinstated the contract. As to the first of these questions, it would seem that if the application for reinstatement and tender of the delinquent interest made by the appellant were valid and effective so as to restore the rights which had been forfeited, the sale to the City of El Paso would have been illegally made and void. Statutes relieving from forfeiture are to be liberally construed in favor of the owner. The one-year limitation provisions would not be applicable [fol. 159] if a reinstatement had been effected before the subsequent attempt to sell. *Davis* v. *Yates*, 63 Tex. Civ. App. 6, 133 S. W. 281. See also *Lovett* v. *Simmons*, Tex. Comm. App. 29 S. W. 2d 1021; *Herndon* v. *Robinson*, Tex. Comm. App. 114 Tex. 446, 270 S. W. 159. We are then required to determine the second question.

It is said that "The books disclose numerous disputes which have arisen where land [in Texas], having been awarded to one person, thereafter was forfeited and awarded to another, the claim of the earlier purchaser depending upon the showing as to whether he was entitled to be reinstated to his rights under his contract of purchase." 34 Tex. Jur. 190, Public Lands § 129. The contract between the appellant's predecessor in title and the State was made pursuant to the statute, and the provisions of the statute became terms of the contract. *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 58 S. Ct. 443, 82 L. Ed. 685, 113 A.L.R. 1482, reh. den. 303 U. S. 667, 58 S. Ct. 641, 82 L. Ed. 1123. See also *Dodge* v. *Board of Education*, 302 U. S. 74, 58 S. Ct. 98, 82 L. Ed. 57; *Hall* v. *Wisconsin*, 103 U. S. 5, 26 L. Ed. 302.

The United States Constitution provides that "No state shall . . . pass . . . any law impairing the obligation of contracts." U. S. Const., Art. I, Sec. 10. A Court of Civil Appeals of Texas has held that this constitutional provision "is violated whenever there is any invasion to the effect of the asserted contract in however small a particular, and it is not required that the contract be entirely [fol. 160] or even materially impinged upon." *Simpson* v.

Pontotoc Common County Line School District, Tex. Civ. App. 275 S. W. 449.

It is the obligation of the contract that is not to be impaired. A statute which merely changes the remedy does not, as a general rule, impair the obligation. *Aikens* v. *Kingsbury*, 247 U. S. 484, 38 S. Ct. 558, 62 L. Ed. 1226. Statutes of limitation refer to the remedy and not to the obligation of a contract and hence do not fall within the constitutional inhibition of statutes impairing the obligation of contracts. *Sturges* v. *Crowinshield*, 4 Wheat. 122, 4 L. Ed. 529. The statutory provision, forming a part of the contract, gave to the contract purchaser a right to reinstate his contract at any time before the rights of third persons intervened. This right of reinstatement was in the nature of a continuing option which the State could terminate only by the creation of a right in another. A Texas Court of Civil Appeals has declared that, "It is our duty to construe these laws so as to alleviate against the rigors of forfeiture, for the law abhors a forfeiture." *State* v. *Walden*, Tex. Civ. App. 325 S.W.2d 705. See also *Gulf Production Co.* v. *State*, Tex. Civ. App. 231 S. W. 124.

In construing the statutory language providing for reinstatement after forfeiture, it was held in the case last cited that the statute was embraced in the contract when it was entered into, and neither the state nor the purchaser could arbitrarily and without the consent of the other write into [fol. 161] the contract any provision or condition varying, restricting or enlarging the terms of the contract; and, the payment of the delinquent interest before the intervention of rights of a third party being the only condition to reinstatement, the state could not impose a different or additional condition. 231 S. W. 124, 131. The right of reinstatement is a vested right which is entitled to protection of constitutional guarantees. See *Anderson* v. *Neighbors*, 94 Tex. 236, 59 S. W. 543. The statute, in force when the purchase was made, which gave to the purchaser a right to redeem from forfeiture, was not one dealing with a remedy, but on the contrary created an obligation of the state to reinstate the contract if payment was made before the intervention of the rights of others. The state could not impair this right, as it attempted to do by the 1941 and 1951

Acts. *Cf. Home Insurance Co.* v. *Dick*, 281 U. S. 397, 50 S. Ct. 338, 74 L. Ed. 926, 74 A.L.R. 701. The tender made by the appellant, assuming it has been or will be kept good, reinstated the contract.

The district court did not consider the defenses of adverse possession and laches. If sustained by the preponderance of evidence one or more of these defenses might defeat the appellant's claim. Therefore a remand is required for the trial of these issues.

Reversed and Remanded.

[fol. 162]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1962

No. 19,754

D. C. Docket No. 2334 Civil

GREENBERRY SIMMONS, Appellant,

versus

CITY OF EL PASO, Appellee.

Appeal from the United States District Court for the Western District of Texas.

Before Rives, Jones and Brown, Circuit Judges.

JUDGMENT—July 18, 1963

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded

to the said District Court for further proceedings in accordance with the opinion of this Court;

It is further ordered and adjudged that the appellee, City of El Paso, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

July 18, 1963

Issued as Mandate:

Recoverable Costs:

Docketing Cause, Etc.	$ 25.00
Costs of Printing Record	452.50
Total	$477.50

[fol. 163] [File endorsement omitted]

[fol. 164]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19,754

[Title omitted]

On Appeal from the United States District Court for the Western District of Texas, El Paso Division.

APPELLEE'S PETITION FOR REHEARING—
Filed August 8, 1963

Appellee, City of El Paso, respectfully petitions the Honorable Court of Appeals for a rehearing in the above cause, and in support thereof, states:

POINT NO. ONE

Article 5326 of Vernon's Annotated Texas Statutes merely modified the remedy by which the State of Texas terminates its land purchase agreements. Therefore, the Court erred in adjudging the Statute an unconstitutional impairment of a contract obligation.

[fol. 165] POINT NO. TWO

Appellee was a bona fide purchaser of the lands in question, and as such, cut off any prior equitable claims of Appellant. Therefore, the Honorable Court of Appeals erred in reversing the decision of the Trial Court.

Wherefore, Appellee respectfully petitions the Honorable Court of Appeals to grant a rehearing in the above cause, and affirm the decision of the Trial Court.

Respectfully submitted,

William J. Mounce of Hardie, Grambling, Sims & Galatzan, Third Floor El Paso Natural Gas Company Building, El Paso, Texas, Attorneys for Appellee.

CERTIFICATE

I, William J. Mounce, attorney for the Appellee, City of El Paso, do hereby certify that the above and foregoing Petition for Rehearing is presented in good faith, and not for delay. I further certify that I have mailed a copy of this Petition to the counsel for Appellant.

William J. Mounce

[fol. 166] BRIEF IN SUPPORT OF PETITION FOR REHEARING—Filed August 8, 1963 (omitted in printing).

[fol. 174]

UNITED STATES COURT OF APPEALS,

FIFTH CIRCUIT

OFFICE OF THE CLERK

EDWARD W. WADSWORTH
Clerk

Post Office Box 30120
New Orleans 30, La.

August 29, 1963

Re: No. 19754 — GREENBERRY SIMMONS, v.
CITY OF EL PASO

Gentlemen:

You are hereby advised that the Court has today entered an order denying the Petition for Rehearing in the above case. No opinion was rendered in connection therewith.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk

Mr. Harold S. Long
Attorney at Law
El Paso, Texas

Mr. Greenberry Simmons
Attorney at Law
Louisville, Kentucky

Messrs. Morris A. Galatzan & Wm. J. Mounce
Attorneys at Law
El Paso, Texas

[fol. 175] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19754

[Title omitted]

Appeal from the United States District Court for the Western District of Texas.

Before Rives, Jones and Brown, Circuit Judges.

Per Curiam

ORDER DENYING PETITION FOR REHEARING—August 29, 1963

It Is Ordered That the petition for rehearing in the above entitled and numbered cause be, and it is hereby Denied.

[fol. 176]

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

OFFICE OF THE CLERK

EDWARD W. WADSWORTH
Clerk

Post Office Box 23
New Orleans 6, La.

September 26, 1963

Clerk
United States District Court
El Paso, Texas

Re: No. 19754 — Greenberry Simmons vs.
City of El Paso
(Your No. 2334 Civil)

Dear Sir:

Enclosed is a certified copy of the judgment of this Court in the above case, issued as and for the mandate, together with a copy of its opinion.

Incorporated on the judgment is a detailed statement of the costs in this Court, as follows:

Docketing cause, etc.	$ 25.00
Costs of Printing Record	452.50
Total	$477.50

recoverable by appellant from appellee upon a final settlement of all costs in your Court. Under separate cover, in one package, I am returning to you the record on appeal in this case.

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By .....
Chief Deputy Clerk

encs. (Letter Only)
cc: Mr. Harold S. Long
Mr. Greenberry Simmons
Messrs. Morris A. Galatzan and William J. Mounce

[fol. 177] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19,754

[Title omitted]

NOTICE OF APPEAL TO SUPREME COURT OF THE UNITED STATES—Filed November 27, 1963

I.

Notice is hereby given that the City of El Paso hereby appeals to the Supreme Court of the United States from the judgment of the United States Court of Appeals for the Fifth Circuit, entered on or about September 7, 1963. This appeal is taken pursuant to 28 U.S.C.A. § 1254(2).

II.

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the United States Supreme Court and include in said transmission the following:

1. Plaintiff's Complaint.
2. Defendant's First Amended Original Answer.
3. Plaintiff's Request for Admissions.
4. Defendant's Response to Request for Admissions.
5. Defendant's Motion for Summary Judgment and Supporting Affidavits.
6. Plaintiff's Exhibits 1-33A, inclusive.
7. Summary Judgment entered by the United States District Court for the Western District of Texas, dated May 18, 1962.
8. Decision of the United States Court of Appeals for the Fifth Circuit, dated July 18, 1963.

9. Letter from the Clerk of the United States Court of Appeals, for the Fifth Circuit, dated August 29, 1963, advising of an entry of Order denying Appellee's Petition for Rehearing.

[fol. 178] 10. Letter for the Clerk of the United States Court of Appeals for the Fifth Circuit, dated September 26, 1963, addressed to the Clerk of the United States District Court of El Paso, enclosing a certified copy of the judgment of the United States Court of Appeals for the Fifth Circuit.

11. Notice of Appeal to the United States Supreme Court.

III.

The question presented for appeal is whether the requirement that a forfeited Texas Land Contract be reinstated within five years from the date of forfeiture as provided in Article 5326, Vernon's Annotated Texas Statutes is repugnant to Article 1, Section 10 of the United States Constitution.

HARDIE, GRAMBLING, SIMS & GALATZAN

By WILLIAM J. MOUNCE

Proof of Service (omitted in printing).

[fol. 181] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 182] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19,754

GREENBERRY SIMMONS, Appellant,

vs.

CITY OF EL PASO, Appellee.

ORDER EXTENDING TIME—February 15, 1964

This is an application by the City of El Paso to enlarge the time for docketing the appeal and filing the record with the Clerk of the United States Supreme Court presented to me as a "judge of the court whose decision is being appealed or in which the notice of appeal is filed." Supreme Court Rule 13, par. 1, 28 USCA. The judgment appealed from was entered on September 26, 1963, following the opinion of this Court in Simmons v. City of El Paso, 1963, 320 F.2d 541 [No. 19754, July 18, 1963]. The Notice of Appeal was timely filed on November 27, 1963, Supreme Court Rule 11; 28 USCA §2101(c). Under Supreme Court Rule 13, Appellant-City of El Paso had 60 days from November 27, 1963 to docket the case and file the record with the Clerk of the Supreme Court. The 60th day fell on Sunday, January 26, 1964, and on Monday, January 27, 1964, Appellant filed an application to enlarge the time with the Clerk of the United States Supreme Court, addressed to the Circuit Justice, the Honorable Hugo L. Black. This application [fol. 183] was timely, Supreme Court Rules 13, par. 1; 34, pars. 2 and 1. However, the application was apparently addressed to the wrong member of the Judiciary, Supreme Court Rule 13, par. 1, no application having first been made to a judge of this Court, and the Clerk of the United States Supreme Court, on January 28, 1964, informed Appellant by telephone that application should be addressed to a

Judge of this Court. On that same day, Tuesday, January 28, 1964, Appellant filed, by telegram, the instant application for a 30-day extension. At the time the application was filed, there was doubt that it was timely. At my suggestion the Appellant filed further papers with me which developed the facts just recited. This Court is informed by letter that Appellee Simmons does not object to a 30-day extension provided it does not waive any rights he may have, including damages for delay and right to require Appellant to file a supersedeas bond.

Because filed with the Supreme Court within the 60-day period, the application is timely; good cause has been demonstrated. Since it does not appear that anyone objects or that anyone will be harmed; it is ordered that the time for docketing the case and filing the record be extended 30 days to February 26, 1964.

Done this 15 day of February, 1964, at Houston, Texas.

John R. Brown, United States Circuit Judge.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 184]

SUPREME COURT OF THE UNITED STATES

No. 866—October Term, 1963

CITY OF EL PASO, Appellant,

vs.

GREENBERRY SIMMONS.

Appeal from the United States Court of Appeals for the Fifth Circuit.

ORDER NOTING PROBABLE JURISDICTION—April 20, 1964

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.